federal register

SATURDAY, JUNE 17, 1972
WASHINGTON, D.C.
Volume 37 ■ Number 118
Pages 12031–12128
PART I

(Part II begins on page 12083)
(Part III begins on page 12121)

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER or the CODE OF FEDERAL REGULATIONS.

Contents

(Continued on next page)

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1972, and specifies how they are affected.

5 CFR

550 12035

7 CFR

68 12122
220 12035
910 12035
911 12036
1823 12036
PROPOSED RULES:
1890s 12068

14 CFR

39 (2 documents) 12061
71 (2 documents) 12062
103 12062
PROPOSED RULES:
71 (2 documents) 12068

16 CFR

PROPOSED RULES:
600 12068

18 CFR

35 12063
154 12063

21 CFR

19 12064
121 12065
130 12066
135c 12066
141a 12066
146a 12066
148i 12067

29 CFR

780 12084

47 CFR

0 12067

50 CFR

35 12067

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 550—PAY ADMINISTRATION (GENERAL)

Specific Exemptions

Part 550 is amended to show that teachers serving in the Department of Defense Overseas Dependent Schools may be permitted to participate as instructors after normal school hours in the Predischarge Education Program without regard to the dual compensation restriction of 5 U.S.C. section 5533.

Effective May 9, 1972, § 550.505 is amended by adding paragraph (z) as set out below.

§ 550.505 Specific exceptions.

When appropriate authority in the department or agency concerned, or in the government of the District of Columbia determines that personal services otherwise cannot be readily obtained, section 5533(a) of title 5, United States Code does not apply to:

* * * * *

(z) Pay for part-time employment of teachers serving in the Department of Defense's Overseas Dependent Schools, as instructors after normal school hours in the Predischarge Education Program.

(5 U.S.C. sec. 5533)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-9185 Filed 6-16-72;8:49 am]

Title 7—AGRICULTURE

SUBCHAPTER A—SCHOOL LUNCH PROGRAM

Chapter II—Food and Nutrition Service, Department of Agriculture

[Amdt. 10]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Requirements for Participation

The revision of paragraph (b) of § 220.16 in amendment 9 of the School Breakfast Program Regulations (37 F.R. 9609, May 13, 1972) inadvertently omitted provisions in the current regulations which it is intended shall remain in effect. Therefore, paragraph (b) of § 220.16 as contained in amendment 9 is hereby revised to read as follows:

§ 220.16 Requirements for participation.

* * * * *

(b) A school drawing attendance from areas in which poor economic conditions exist that has no equipment or grossly inadequate equipment to operate an adequate feeding program under the National School Lunch Program or the School Breakfast Program shall be selected for participation in the Nonfood Assistance Program on the basis of: (1) The relative need of such school for assistance in acquiring such equipment, determined on the basis of the information supplied for that school and for other schools in the applications submitted, and (2) the amount of funds available to the State agency, or FNSRO where applicable. State agencies, or FNSRO where applicable, have a positive obligation to inform the School Food Authority having jurisdiction over any such school of the Nonfood Assistance Program and, within available funds, to work with such School Food Authority to plan for the acquisition of any equipment needed to operate an adequate feeding program in such school under the National School Lunch Program or the School Breakfast Program. The Nonfood Assistance Program funds made available to the State agency, or FNSRO where applicable, may be obligated at any time during the fiscal year: *Provided, however,* That, except when prior approval is obtained from FNS, the State agency, or FNSRO where applicable, shall not obligate before February 1 of each fiscal year more than 50 per centum of such funds for use by schools already participating in the National School Lunch Program or the School Breakfast Program.

* * * * *

It is impracticable to follow the proposed rule making and public participation procedure with respect to this amendment since this amendment must be made effective on July 1, 1972, in order to continue the provision currently in effect without interruption.

Effective date. This amendment shall become effective July 1, 1972.

Dated: June 14, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72-9189 Filed 6-16-72;8:49 am]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 538]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.738 Lemon Regulation 538.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on June 13, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period June 18, 1972, through June 24, 1972, is hereby fixed at 325,000 cartons.

(2) As used in this section, "handled," and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 15, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-9230 Filed 6-16-72;8:50 am]

[Lime Reg. 4]

PART 911—LIMES GROWN IN FLORIDA

Limitation of Handling

§ 911.404 Lime Regulation 4.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 37 F.R. 10497), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Florida Lime Administrative Committee established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for the regulation stems from the current supply and market situation. There currently is available a much greater supply of limes than can be marketed at a fair return to growers. The current crop of limes is estimated to be the largest crop of record and 14 percent above last season's record crop. Continued unseasonably cool weather in most major markets has resulted in sluggish demand for limes in such markets. The committee reports that because of the large supply available, excessive shipments would likely be made next week in the absence of volume regulation. It estimates that 22,940 bushels were shipped last week and that 19,281 bushels were shipped during the preceding week. Shipments of limes during the current week, the third week of volume regulation, are limited to 20,000 bushels. Limitation of volume to such levels has resulted in a more stable market situation, and there is indication that demand will increase slightly next week. Thus, continued volume regulation is needed to promote orderly marketing by limiting shipments as hereinafter specified during the week of June 18 through June 24, 1972.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Florida limes, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such limes; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on June 14, 1972.

(b) *Order.* (1) The quantity of limes grown in Florida which may be handled during the period June 18, 1972, through June 24, 1972, is hereby fixed at 22,500 bushels.

(2) As used in this section, "handled" and "limes" have the same meaning as when used in said amended marketing agreement and order, and "bushel" means 55 pounds of limes.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 16, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-9270 Filed 6-16-72;8:50 am]

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FHA Ins. 442.1; AL-870(442)]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Loans and Grants for Community Domestic Water and Waste Disposal Systems

On Wednesday, March 1, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 4267) to amend 7 CFR, Subpart A of Part 1823 to outline the policies and authorizations and set forth the provisions for making and processing loans and grants to rural communities and other associations for central domestic water and waste disposal systems. Interested persons were afforded the opportunity to participate in the rule making through the submission of comments. A number of comments were received and due consideration has been given to all material presented. In light of the comments and subsequent review the regulations are being published and a number or revisions and editorial changes have been made principally with respect to developing community water and waste disposal facilities.

The comments resulted in changes with respect to:

1. Clarification of who shall be deemed eligible to perform FHA required audits.

2. A change which would make it clear that a portion of bonds proportionate to FHA investment may be sold to FHA even though secured by revenue of the entire system where FHA is financing serve both urban and rural areas.

3. Adding the provision that revenue bonds given as security for solid waste projects when backed by the full faith and credit of the underlying Governments will be acceptable.

4. Applicants engaging a qualified construction inspector, provided the inspector will work under the general supervision of the Consulting Engineer.

5. Editorial changes. In accordance with the above, the regulations as amended will appear as Subpart A of Part 1823, Subchapter B, Loans and Grants Primarily for Real Estate Purposes, and are hereby adopted effective on the date of their publication in the FEDERAL REGISTER (6-17-72).

Subpart A—Loans and Grants for Community Domestic Water and Waste Disposal Systems

Sec.

AUTHORITY: The provisions of this Subpart A issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Order of Act. Sec. of Agr., 36 F.R. 21529; Order of Asst. Sec. of Agr. for Rural Development and Conservation, 36 F.R. 21529.

Subpart A—Loans and Grants for Community Domestic Water and Waste Disposal Systems

§ 1823.1 General.

This subpart is supplemented by Parts 1890, 1890g, 1890h, 1890p, and 1890r of this chapter. This subpart outlines the policies and authorizations and sets forth the procedures for making and processing insured and direct loans and development grants to rural communities and other associations of farmers and rural residents for central domestic water systems and waste disposal systems.

§ 1823.2 Definitions.

The following definitions are applicable to terms used in this subpart:

(a) *Association.* The term "association" includes municipalities, counties, other political subdivisions of a State; districts, public authorities, and the like often referred to as quasi-public agencies; and cooperatives and corporations operated on a nonprofit basis, which have the legal powers to engage in the activities authorized in this subpart.

(1) An existing private corporation even though organized under the general profit corporation laws may come within this definition if it actually will be operated on a nonprofit basis under such charter, bylaws, mortgage, or supplementary agreement provisions as may be required as a condition of loan approval. Associations just being formed will be incorporated under appropriate State nonprofit or cooperative statutes, unless State statutes do not provide for nonprofit corporations or cooperatives suitable to carry out the purposes of the loan or grant.

(2) An association may receive assistance for more than one of the major purposes listed in this subpart when it is organized with the necessary powers conferred by State law to engage in multiple purpose activities.

(b) *Farmer.* The word "farmer" as used herein means one who is engaged in the production of agricultural commodities (including persons engaged in the production of fish under controlled conditions), ranchers, farm tenants, and farm laborers.

(c) *Rural resident.* The term "rural resident" means anyone who permanently resides in a rural area.

(d) *Rural area.* The term "rural area" means open country, an incorporated or unincorporated town, village, or other place which does not include any city, town, village, or the like which has a population in excess of 5,500 permanent inhabitants, according to the latest reliable population estimate.

(e) *Direct loan.* A "direct loan" means a loan made from funds in the Farmers Home Administration (FHA) direct loan account.

(f) *Insured loan.* The term "insured loan" means either:

(1) A loan made from funds furnished by a lender and insured by the Government at the time of closing, or

(2) A loan made from the Agricultural Credit Insurance Fund (also referred to as ACIF), to be sold to a purchaser and insured by the Government at the time of sale from the ACIF.

(g) *Development grant.* The term "development grant" means a grant made by FHA to assist in financing the development cost of domestic water and waste disposal systems. These grants are made from direct appropriated funds administered by FHA.

(h) *Development cost.* The term "development cost" means, the cost of construction of the proposed facility, including land rights, easements, rights-of-way, necessary water rights, engineering fees, legal fees, administrative costs in connection with construction and acquisition, and estimated interest during the development period on any funds borrowed to perform such development.

(i) *Tax-exempt public body.* The term "tax-exempt public body" means a municipality, political subdivision, public authority, district, or similar organization issuing obligations on which the interest income is exempt from Federal income taxes.

(j) *Typical year.* The term "typical year" as used in this subpart means a year after which the association has completed its development and which is anticipated to be representative of the ordinary or normal year the association may expect. The number of users, members, or participants to use in analyzing the typical year operation will be those who reside in the area at the time of loan closing and can reasonably be expected to become users of the facility.

(k) *EDA.* The term "EDA" means the Economic Development Administration, an agency of the Department of Commerce.

(l) *EDA area.* The term "EDA area" means an area designated by the EDA as a "qualified area" under the Public Works and Economic Development Act.

(m) *Regional Economic Development Commission.* This refers to the Appalachian, New England, Ozark, Upper Great Lakes, Coastal Plains, Northern Great Lakes and Four Corners Regional Development Commissions.

(n) *EPA.* The term "EPA" refers to the Environmental Protection Agency. This agency now handles responsibilities formerly administered by Federal Water Quality Administration (FWQA) and Federal Water Pollution Control Administration (FWPCA).

(o) *Public Law 660 Grant.* This is a grant made for waste treatment facilities by the EPA pursuant to Public Law 84–660, as amended by Public Laws 87–88, 89–234, and 89–753 and administered by the State Pollution Control Agency.

(p) *State Pollution Control Agency.* This term refers to the State agency which is responsible for administering Public Law 660 funds within the State.

(q) *Waste treatment facility.* This term is limited to that portion of the interceptor beyond the point where the last raw sewage lateral joins the interceptor line to the treatment plant, the sewerage treatment plant, and the outfall lines.

§ 1823.3 Eligibility.

To be eligible for financial assistance, an association must:

(a) Propose central domestic water or waste disposal facilities which will be:

(1) Primarily used by, or which will generate substantial, tangible benefits primarily for farmers and other rural

residents. In the case of a private corporation the use or benefit test is applied to members of the corporation. In the case of a public body, the use of benefit test is applied to the permanent residents within its boundaries or within the boundaries of the rural area to be served by the proposed facility. (An example of substantial, tangible benefits other than direct use of facilities: A rural community may need assistance to extend a water system to serve existing or committed industrial or commercial users whose operation will result in a substantial amount of employment for the local rural residents.) Membership of associations providing community facilities should be broadly based and representative of the community benefiting from the facility.

(2) Located in a rural area and serve farmers and rural residents living in the area. The facility will be controlled by farmers and rural residents, except that if the applicant is a public body and the State Director finds that control by the farmers and rural residents is not feasible, the control may be exercised by the public body when the State Director determines that it can adequately represent the interests of the rural people to be served. In those cases where a project will serve both urban or urbanizing and rural areas, FHA may finance that portion of the facility serving the rural area provided that FHA will have a valid security interest in the revenues from or tax obligations of the borrower attributable or in an amount proportionate to that portion financed by FHA. The dockets for all projects serving both urban and rural areas will be submitted to the National Office for review prior to loan or grant approval.

(b) Propose a facility which will not duplicate or compete with existing or planned private or public facilities. In any case where there is a question as to whether the facility will duplicate or compete with existing or planned public or private facilities, complete information on the degree of duplication or competition will be forwarded to the National Office for consideration before the project summary is prepared. Submissions will include written statements from local leaders and from owners of existing or planned private facilities and such statements should explain their attitude toward the proposed facility. In any instance where two or more applications for projects that would serve substantially the same group of residents within a single rural area are received and one of the applications is submitted by a village, town, county, or other unit of local government, assistance will be provided through the unit of local government unless prior approval of the National Office is obtained.

(c) Be without sufficient funds to carry out the purposes for which the loan or grant is requested and be unable to obtain adequate credit from other sources on reasonable rates and terms. In considering the availability of credit through general obligation bonds, it is not intended that a community be required to exhaust all of its taxing authority to meet this requirement when such remaining authority is limited and is likely to be needed to finance facilities which cannot be financed through revenue bonds or other means. In order to establish that sufficient funds at reasonable rates and terms, as evidenced by a predetermined reasonable annual debt service cost, are not otherwise available to tax-exempt public bodies, all such applicants for either direct or insured loans in excess of $50,000 will be required to advertise on the open market for a lender (on a non-FHA-insured basis) before FHA makes either a loan or grant or insures a loan. If the applicant does not receive an offer from other sources to purchase all of its bonds at reasonable rates and terms, FHA will proceed to make the loan provided it is otherwise sound and proper.

(d) Have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan.

(e) Propose a system which will be designed and installed to serve the entire service area with service to be provided to anyone within the service area who desires to be served insofar as is economically feasible. No user or area will be denied service because of race, color, creed, or national origin.

(1) Systems serving incorporated municipalities and similar entities will be installed so as to afford service to all users living within the corporate limits plus adjacent built-up areas which logically should be served by the central system unless State or local law precludes service outside the corporate limits or prior exception is granted by the National Office.

(2) Systems serving open country will be installed so as to serve all users requesting service insofar as economically feasible.

(3) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, creed, or national origin.

(4) The requirements of subparagraphs (1), (2), and (3) of this paragraph do not preclude the financing of:

(i) Projects by phases when it is not practical to finance the entire project at one time, and

(ii) Projects for municipalities where it is not economically feasible to serve the entire area provided economic feasibility is determined on the basis of the entire system, not by considering the costs of separate extensions to or parts thereof; the applicant must have and publicly announce a plan for extending service to areas not initially receiving service from the system; and those families living in the areas not to be initially served must receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(iii) Extensions to serve industrial areas when service is made available to users located in the service area of the extension.

(5) The applicant will be required to notify each potential user of the availability of the service.

(i) If a mandatory hookup ordinance will be adopted, the required note or bond advertisement will be considered adequate notification, except in those cases being processed under subdivision (ii) of subparagraph (4) of this paragraph.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potential user will be afforded an opportunity to request service by signing a Users Agreement. Forms are available in all FHA offices to expedite this service as well as forms for those declining such service. The applicant will prepare a map showing each potential user surveyed, and the results of the survey. Also, a list should be maintained of those who decline service.

§ 1823.4 Determining need for development grant.

(a) In order that beneficial use of development grant funds may be made, a development grant will not be considered in docket preparation until the State Director has made a preliminary determination regarding the grant request. Such determination will be based on a review of the preliminary engineering report, a draft of the proposed budget, facts concerning income levels in the applicant community, emergency, health, economic, and other factors, and a comparison of proposed user charges with user charges of established systems of similar size and cost and ratio of residential users serving communities of similar economic circumstances.

(b) Development grants may be made to eligible associations to assist in financing specific projects for development, storage, treatment, purification, and distribution of domestic water, and the collection, treatment, or disposal of waste in rural areas where such grants are necessary to reduce average annual user charges to a reasonable level. Grants may be made to supplement funds provided by private sources or in connection with FHA loans for development.

(c) Grants may be made only when the cost of the proposed development would result in the user charges being excessive to the average residential user, and by the use of grant funds to reduce the amount of the applicant's share of the total project cost, the user charges would be lowered to a reasonable level. The following will be determined and considered in establishing a reasonable level and the amount of the development grant:

(1) The amount of the average annual residential user cost, including revenues from periodic charges, taxes, and assessments, without taking into consideration any FHA grant.

(2) The amount of average annual residential user cost, including periodic charges, taxes and assessments, levied in connection with established systems of

similar size and costs and percentage of residential users in communities of similar economic conditions.

(3) The difference between the cost found in subparagraphs (1) and (2) of this paragraph. If the average annual residential user cost as determined in subparagraph (1) of this paragraph significantly exceeds that as determined in subparagraph (2) of this paragraph, consideration may be given to a development grant.

(4) Income levels in the community and emergency, health, economic, and other factors.

§ 1823.5 Use of loan and grant funds.

Funds may be used in accordance with the following:

(a) *Loan and development grant funds.* Loan funds may be used for all of the following purposes. Development grant funds may be used only for the following purposes which represent a part of the development cost, except interest.

(1) *Domestic water and waste disposal facilities.* Install and improve central community domestic water and waste disposal facilities including:

(i) Facilities for the development, storage, treatment, purification, and distribution of water.

(ii) Sanitary sewer facilities including collection lines, treatment plants, outfall lines, disposal fields, and stabilization ponds.

(iii) Storm sewers for the collection and disposal of surface drainage.

(iv) Solid waste disposal projects including facilities for the collection, treatment, or disposal of human, animal, agricultural, and other wastes. Items such as garbage trucks and equipment, sanitary landfills, and incinerators are included. State Directors are authorized to use up to ten (10) percent of their annual allocation of loan and grant funds for solid waste projects without such projects being included in processing schedules, but funds to be used for such projects must be considered in preparation of the processing schedule. Grants for solid waste projects may be used without regard to the reasonable user cost test required by § 1823.4(c). Such grants may not exceed 20 percent of the eligible portions of the total development cost unless otherwise authorized by National Office memorandum. State Directors may recommend higher percentage ceilings than those set out above for their States by memorandum. All loans and grants for solid waste projects will be made to public bodies unless specific prior National Office approval is obtained.

(2) *Individual facilities.* Provide service through individual facilities for users who normally would be considered to be within the central system service area but who live beyond the physical or economic limits of the central system, when the association determines it is more feasible to provide such service through individual facilities. In making its determination, the association will consider such items as: Adequacy and permanency of the individual user facility; cost of the individual facility as compared with the cost per user on the central system; health and pollution problems attributable to individual facilities; and the various types of users.

(i) Agreements between the association and individuals for the installation and payment for individual facilities and their operation will be subject to approval by FHA. A form suggested for this purpose and which may be used as a guide for the preparation of such agreements is available in all FHA offices.

(ii) Notes representing indebtedness owed an association by a user for an individual facility will be scheduled for repayment over a period not to exceed the useful life of the facility. The interest rate will be the same as the rate owed by the association on its FHA loan. Such notes will be assigned to the FHA as security.

(iii) Associations providing service through individual facilities will obtain such security as the State Director determines is necessary to insure collection of any sum the individual is obligated to repay the association.

(3) *Acquire land and rights.* Acquiring land, interests in land, and rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control which are necessary to development of the facility.

(4) *Buildings, fences, secondary facilities, and relocation.* (i) Construct buildings of modest design, size, and cost, and fences essential to the successful operation or protection of authorized facilities and to provide storage for tools and supplies needed to operate the facility, and secondary facilities such as gas or electric service lines to convey fuel or energy for, or utilities for, primary facilities.

(ii) Relocate roads, bridges, utilities, fences, and other pubilc or private improvements.

(5) *Services and fees.* Pay costs incidental to establishment of such facilities or for services necessary in accomplishing any of the above purposes, including, but not limited to:

(i) Paying fees or other legal expenses of establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Paying for other services necessary in obtaining the loan or grant, and in planning and completing the facilities to be financed.

(iii) Acquiring a water supply by the purchase of water stock or membership in a water users association.

(b) *Loan funds.* Funds may be used for:

(1) *Paying interest.* Funds may be included in loans in an amount necessary to pay interest installments when such installments cannot be deferred as authorized by § 1823.9(c) until such time as the facility is generating sufficient revenue to be self-supporting in accordance with the following:

(i) *Amount.* The amount of such funds will not exceed the amount of interest which will accrue on the loan from the estimated date of loan closing to a date not beyond the end of the third full calendar year after the estimated loan closing date, and such interest may be paid with loan funds only when revenues or tax receipts will not be sufficient or collectible in time to pay such accrued interest. However, the State Director may authorize the use of loan funds to pay interest for a longer period with prior approval of the National Office.

(ii) *Direct loans.* Funds will not be advanced to pay interest unless State statutes preclude the deferment of interest payments or unless the bonds are required to be offered for public sale in accordance with § 1823.3(c). This requirement does not preclude the transfer of loan funds remaining after construction is completed from the construction account to the debt service account if such transfer is required by the bond ordinance or resolution.

(2) *Purchase existing facilities.* Loan funds may be used only when it is determined that the purchase is necessary to provide efficient service through an association owned and operated facility, or the present owner is either unwilling or unable to make improvements, enlargements, or extensions needed.

(3) *Refinancing.* Loan funds may be used for refinancing debts incurred by or on behalf of an association prior to an application for a loan when all of the following conditions exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the loan.

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the debt so that a sound basis will exist for making a loan.

(iii) The prior approval of the National Office has been obtained when it is proposed that the amount to be advanced for refinancing will exceed 50 percent of the total loan.

(4) *Initial operating expenses.* Loan funds may be used to pay initial operating expenses that will be incurred before any or sufficient revenue is realized from the system or from taxes or assessments when the association is unable to pay such expenses from contributions or other sources, or due to unforeseen construction delays, it is determined that such purpose should be permitted to protect FHA security, and the State Director has approved such action in advance. No such expenses may be allowed for a period of more than 1 year. Ordinarily, it is expected that such expenses will be paid from cash contributions, membership fees, dues, assessments, or taxes.

(5) *Equipment (including office equipment).* Loan funds may be used to purchase or rent equipment to install, or to purchase equipment to maintain facilities which may be installed or improved in accordance with this subpart, when it is not practical for the applicant to purchase such equipment with contributions or funds otherwise available, provided such equipment is not otherwise available

when and as needed, and there is sufficient need to justify ownership or rental. It is expected that borrowers ordinarily will purchase such equipment from their cash on hand or cash contributions.

§ 1823.6 Loan and grant limitations.

(a) *Loans and grants.* Neither loan nor grant funds may be used to:

(1) Pay for the construction of any new combined storm and sanitary sewer facilities.

(2) Pay any annually recurring costs that are generally considered to be operation and maintenance expenses. This does not preclude the use of loan funds for the purposes named in § 1823.5 (b)(4).

(3) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale.

(4) Purchase firetrucks, hoses, and other firefighting equipment or construct housing for such equipment.

(5) Pay rental for the use of equipment or machinery owned by the association.

(6) Pay for sales rooms and other purposes not directly related to operation and maintenance of the facility being installed or improved.

(b) *Grants.* Development grant funds will not be used to:

(1) Finance any part of the development cost of any project unless the approval office determines that the project will serve a rural area which is not likely to decline in population below that for which the facility is designed.

(2) Purchase existing systems.

(3) Refinance existing indebtedness.

(4) Pay any portion of the cost of a facility in cases where the annual reserve based on a typical year exceeds one-tenth of the average annual debt service requirement unless State regulatory agencies require a larger reserve or where operation and maintenance costs are unrealistic.

(5) Pay interest.

(c) *Amount*—(1) *Loans.* No association loan may be made or insured which will cause any association's total unpaid FHA principal indebtedness for association loans (including prior Soil and Water (SW) and Water Facilities (WF) loans) together with any FHA development grant to exceed $4 million.

(2) *Grants.* (i) An FHA development grant may not be made in excess of 50 percent of the eligible development cost. However, for sewage treatment facilities but not sewage collection, the following requirements will apply:

(*a*) Eligible costs are limited to those for which EPA grants may be made including the treatment plant, necessary interceptor lines, outfall lines, and related facility costs such as engineering and legal fees. Costs of land or rights in land are not eligible.

(*b*) The total of the FHA grant plus the grant of any other Federal agency will not exceed 30 percent of the eligible development cost except:

(*1*) If a State has agreed with EPA to pay 30 percent of the costs of all projects for which EPA grants may be made, then the total Federal grants may not be more than 40 percent; or

(*2*) If a State has agreed with EPA to pay 25 percent of the costs of all projects for which EPA grants may be made and has established enforceable water quality standards for the waters into which the project discharges in acordance with section 10(c) of the Federal Water Pollution Control Act, then the total Federal grant may not be more than 50 percent; or

(*3*) If the area is designated as "qualified areas" under the Public Works and Economic Development Act of 1965 (EDA area), then the total Federal grant may not be more than 50 percent.

(ii) If any other Federal grants are made in connection with the proposed project, the amount of any FHA grant plus the amount of other Federal grants may not exceed 50 percent, or the applicable percentage for sewage treatment facilities, of the development cost of the project unless such other Federal grants are being made by the Department of Defense, EDA, or a Regional Economic Development Commission.

(iii) Facilities previously installed will not be considered in determining the development costs. The amount of any FHA advance for planning previously made may be included in the development cost.

(iv) In those cases where States have grant funds (not Public Law 660 funds), use of such funds ordinarily will be considered before using FHA grant funds. However, such funds need not be considered in computing the grant percentages for Federal grant determinations.

§ 1823.7 Obligations incurred before closing.

When an applicant files an application for assistance, the County Supervisor will advise the applicant that construction work must not be started and obligations for such work or materials and obligations for other purposes must not be incurred before the loan or grant is closed. If the applicant nevertheless wishes to proceed before closing because of emergency conditions, it may request permission from the State Director to pay such obligations if a loan or grant is made.

(a) Upon receipt of such a request the State Director will determine whether:

(1) A necessity exists for incurring obligations before loan or grant closing.

(2) The obligations will be incurred for authorized loan or grant purposes.

(3) Contract documents have been approved by FHA.

(4) The association has the legal authority to incur the obligations at the time proposed.

(5) Payment of the debts will remove any basis for any mechanic's, materialmen's, or other liens that may attach to the security property.

(b) If the State Director finds that all the conditions under this subpart are met, he may give the applicant written permission for the payment of such obligations from loan or grant funds if a loan or grant is closed. His letter will specifically state that the permission granted is on the condition that the FHA is not committed to make a loan or grant and assumes no responsibility for any obligation incurred by the applicant because of the permission granted, and that the applicant must subsequently meet all FHA requirements for the loan or grant.

§ 1823.8 Security.

All loans to associations will be secured in a manner which will adequately protect the interest of the FHA during the payment period of the loan. Loans will be secured in accordance with the following:

(a) *Loans to other than public bodies.* (1) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, and similar property rights, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land rights (such as land rights obtained from Federal or local government agencies and from railroads) and the State Director determines that the interest of the FHA otherwise is secured adequately, the lien requirement may be omitted as to such land rights. In those instances where such property rights have not been legally perfected, it will be the responsibility of the applicant to obtain and record such releases, consents, subordinations to such property rights from holders of outstanding liens, or other instruments, as it determines, with the advice of its attorney, that are necessary for the construction, operation, and maintenance of the facility. When easements only are obtainable on sites for structures such as reservoirs and pumping stations, release, consents, or subordinations may be required by the FHA. The mortgage will provide for the applicant to pay from its own funds for any excess installation costs resulting from a failure to obtain adequate land, rights-of-way, or subordinations.

(2) Where the loan is approved for the acquisition of real property subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken.

(3) No lien will be taken on the personal property owned at the time of loan approval or acquired with loan funds or otherwise, except when it is deemed necessary to take a lien on such personal property to provide adequate security for FHA.

(4) Assignments of association income will be taken and perfected by filing, if legally permissible.

(5) Promissory notes, stock or membership subscription agreements, individual member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to the FHA as additional security in any case in which the interest of the FHA will not be otherwise adequately protected.

(b) *Loans to public bodies.* State statutes generally provide detailed requirements for evidencing and securing loans to municipalities, districts, and other public bodies. Loans to such associations will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by association documents, resolutions, and ordinances. State statutes also generally specify the security that may be given by the applicant. This security may be one or more of the following:

(1) Pledges of revenues to be derived from operation of the association's facilities.

(2) Pledges of taxes or assessments.

(3) Liens on real and personal property where such liens are permitted by State law.

(4) The full faith and credit of the borrower where the debt is evidenced by general obligation bonds.

(5) Loans for solid waste projects will be evidenced and secured as are loans for water and sewer facilities, except as to revenue bonds. Revenue bonds may be used only where the revenues pledged include those from the solid waste project plus revenues from other facilities of the applicant with tie-in enforcement rights, or are secured by the taxing power of participating local governments.

§ 1823.9 Loan terms.

(a) *Repayment period.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note(s) or bond(s). In addition, no repayment period will exceed any statutory limitation on an association's borrowing authority, nor will it exceed the useful life of the facility to be financed.

(2) Repayments will be scheduled annually beginning with January 1 following the date of loan closing or on the first January 1 following the end of any approved deferment period unless an Office. In those cases where loans are required by State statute or upon prior written authorization of the National Office. In those cases where loans are being made under statutes requiring a repayment date other than January 1, this State Director will forward to the Finance Office a copy of the Office of the General Counsel's (OGC) opinion that the date of other than January 1 is required.

(b) *Repayment schedules.* (1) In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid when due, the payment made will be applied first to accrued interest.

(2) In those cases where the indebtedness will be represented by serial bonds, annual payments of principal and interest will be scheduled so as to permit them to be paid in amounts approximately equal to the amounts required for annual amortized installments.

(3) If the borrower will be retiring other debts represented by bonds or notes the repayment on such bonds may be considered in developing the repayment schedule for the FHA loan. In some cases, it may be desirable to reduce the amount of repayments to FHA in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such repayment schedules are proposed, National Office authorization is to be obtained prior to loan approval.

(c) *Deferred payments.* Principal and interest may be deferred on a direct loan but only principal may be deferred on an insured loan. The payments may be deferred in whole or in part for a period not to exceed the end of the third full calendar year after the estimated date of loan closing. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. However, when the bonds are to be offered for public sale, interest payment should not be deferred.

(1) Deferments of principal or interest will not be used to:

(i) Postpone the levying of taxes or assessments.

(ii) Delay the collection of the full rates which the association has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(iii) Create reserves for normal operation and maintenance.

(iv) Make any capital improvements except those considered by the State Director to be essential to the repayment of the loan or to the obtaining of adequate security therefor and upon prior written approval of the National Office.

(v) Accelerate the payment of other debts.

(vi) Permit making a loan when repayment will depend upon anticipated income from service to users who are not located in the service area at the time the loan is closed or who have not at that time agreed to accept and pay for such service.

(2) Proposed deferments will be consistent with provisions of State or local laws affecting the creation and repayment of debts by borrowers.

(d) *Interest rates.* Current information regarding interest rates may be obtained from any county or State office of the FHA or from its national office at 14th and Independence Avenue SW., Washington, DC 20250.

§ 1823.10 Reserves.

Each borrower will be required to establish and maintain reserves for delinquent accounts sufficient to assure that loan installments will be paid on time. Reserve accounts will also be established for emergency maintenance and for extensions to facilities. In those cases where statutes provide for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State and local taxes, special reserves will be established and maintained for the protection of the borrower's lien of assessment. Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services.

(a) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient tax or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(b) *Revenue bonds.* It is expected that associations issuing bonds pledging facility revenues as security will ordinarily plan their reserve program to provide for a total reserve in amount equal, at least, to one average loan installment. It also is expected that ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

§ 1823.11 Insurance and bonding.

Property insurance, Workman's Compensation Insurance, liability insurance, and fidelity bonds will be required as follows:

(a) *Property insurance.* In like manner as provided in Part 1806, fire and extended coverage will be required on all above ground structures, including association-owned equipment and machinery housed therein. This does not apply to water reservoirs, standpipes, elevated tanks, and other noncombustible materials used in treatment plants, clearwells, clarification units, filters, and the like. Where lift stations are properly ventilated, insurance may not be required except only for the value of the pumping equipment and electrical equipment therein.

(b) *Workman's compensation.* The association will be required to carry suitable Workman's Compensation Insurance for all of its employees in accordance with appropriate State laws.

(c) *Liability and property damage insurance.* Requirements for liability insurance will be carefully and thoroughly considered in connection with each project financed by a loan. Public liability and property damage insurance amounts will be established accordingly. If the association owns trucks, tractors, or other vehicles that frequently are driven over public highways, public liability and property damage insurance will be required.

(d) *Fidelity bonds.* (1) The association will provide fidelity bond coverage for the positions of officials (not necessarily including employees such as checkstand operators, caddies, concession operators, and other such employees) entrusted with the receipt and disbursement of its funds and the custody of any property. The amount of the bond will be at least equal to the maximum amount of money that the association will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. If permitted by State law, the United States will be

named as co-obligee in the bond. Corporate fidelity bonds will be obtained except that in unusual circumstances the National Office may give prior approval to cash bonds. Form FHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(2) In cases where the State Director determines that the cost of fidelity bonds in amounts sufficient to cover all accumulated reserves is excessive the State Director may approve the use of a fidelity bond in an amount equal to the amount of funds collected by the association in 1 year and the depositing of reserves in a special account requiring the countersignature of the County Supervisor for withdrawals. In such cases, the State Director will request the assistance of the OGC in preparation of the deposit agreement.

(e) *Public-body-type organization.* Public-body-type organizations receiving assistance as authorized in this subpart will provide insurance and bonds as required insofar as they are able to do so under applicable State statutes and regulations.

§ 1823.12 Coordination with Federal, State, and local agencies.

Projects financed in whole or in part with association loan or grant funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(a) *Memorandum of Understanding with the Economic Development Administration, Department of Commerce.* Two memoranda of understanding between EDA and FHA have been executed; one outlines policies for projects where EDA provides a basic grant and FHA provides a loan only; the other memorandum outlines policies for projects where FHA assistance includes a grant which is being supplemented by an EDA "supplemental grant." Copies of these two memoranda are available at all FHA offices and will be used as guides in developing project management agreements for projects when both EDA and FHA provide financial assistance. Every such agreement must be consistent in all respects with the appropriate memorandum.

(b) *Bylaws for nonprofit water and sewer corporations—consistent with the Federal Housing Administration regulation.* A set of model bylaws for nonprofit water and sewer corporations consistent with the Federal Housing Administration regulation has been reviewed and approved by the Federal Housing Administration, therefore, members of nonprofit water associations should experience no difficulty in obtaining financial assistance from that agency when these bylaws are used. These bylaws should be used in all cases unless prohibited by State statutes. Copies are available at all FHA offices.

(c) *Compliance with special laws and regulations.* Applicants for loans or grants will be required to comply with State and local laws and any regulatory commission rules or regulations pertaining to:

(1) Organization of the association and its authority to install, operate and maintain the facilities proposed to be constructed.

(2) Borrowing of money, giving security therefor, and raising revenues for the repayment thereof.

(3) Appropriation, diversion, storage and use of water, and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed. If, under the provisions of State law, notice of the proposed diversion or storage of water may be filed in the office of a State official, such notice must be filed by the applicant. Even though such filing may be optional under State law the record might be of value at some future time to protect the association's right or priority to the use of water. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

(4) Land use zoning.

(5) Permission to construct facilities and the approval of construction plans and specifications by State and local officials.

(6) Health and sanitation standards.

§ 1823.13 Professional services and contracts related to the facility.

The FHA may provide general advice and consultation in connection with preliminary determinations regarding engineering feasibility, economic soundness, cost estimates, organizations, financing, and management. Applicants will be responsible for providing the services necessary to plan projects, including design of facilities, preparation of cost and income estimates, and development of proposals for organization and financing. The County Supervisor will inform the association of the services it must provide.

(a) *Solid waste disposal projects.* (1) In planning solid waste disposal systems, the applicant should take advantage of all technical assistance available such as:

(i) The Soil Conservation Service (SCS) may assist with the evaluation of landfill sites, the suitability of the soils, drainage problems, and erosion control. SCS can provide advice on land utilization and site maintenance after the landfill is completed.

(ii) State Health Departments can ordinarily provide assistance in selecting landfill sites and can provide guidance on possible air and water pollution problems. Normally, the State Health Department can assist the applicant in evaluating collection, transportation, and disposal costs. An applicant should not obligate itself for a landfill site which has not been reviewed and approved by the State Health Department.

(2) Ordinarily, a qualified engineer should be engaged to assist the applicant with site selection, planning, landfill design, drainage control, roadways, utilities, and other related problems, and cost estimates and annual budgets. The engineer should also consider any problems which may arise due to water leaching into or from landfills and should provide a design which will allow for proper handling of landfill gases. Since solid waste disposal projects normally involve a small amount of construction work, the applicant should consider negotiating for engineering work on a lump-sum fee basis rather than on a fixed percentage of the construction cost.

(b) *Selection of legal counsel.* The association will be responsible for selecting its legal counsel, and FHA personnel are prohibited from recommending a particular attorney or firm of attorneys. The applicant may select any attorney who is qualified and agreeable to performing the required legal services. A sample form entitled, "Legal Services Agreement," is available at all FHA offices and may be used as a guide for preparation of legal services agreements. The State Director is authorized to approve such agreements.

(1) *Tax-exempt public bodies.* Tax-exempt public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue. Ordinarily, the bond counsel will be retained by the applicant through it local attorney. A statement as to the exemption of interest income on such obligations from Federal and State Income taxes will be included in the opinion.

(2) *Applicants other than tax-exempt public bodies.* Recognized bond counsel should not be needed.

(c) *Water purchase contracts.* Associations proposing to purchase water from private or public sources will be required to have written contracts for such supply, and all such contracts will be reviewed and approved by FHA prior to their execution by the association. Form FHA 442–30, "Water Purchase Contract," will be used for this purpose unless the circumstances are such as to require a different form of agreement. In all cases, water purchase contracts will:

(1) Include a definite commitment by the supplier to furnish at a specified point a specified minimum quantity of water and provide that in case of shortages, all of the supplier's users will share the shortages proportionately. However, if it is impossible to obtain a firm commitment for a minimum supply of water at all times, a contract may be executed and approved if the State Director makes a positive determination that the supplier has adequate supply and treatment facilities to furnish its other users and the applicant association for the foreseeable future, and that a suitable alternative supply could be arranged within the repayment ability of the association if it should ever become necessary.

(2) Set out the ownership and maintenance responsibilities of the respective parties for the master meter at the point of delivery. It is generally simpler if the

supplier installs, owns, and maintains the meter.

(3) Specify the rates at which water will be sold to the association. Since it is difficult to predict future costs of water production, it is generally most satisfactory to provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provision may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run, if possible, for a period of time which is at least 50 percent longer than the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the applicant and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The contract contains adequate provisions for renewal.

(ii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources of water available to the applicant that can be developed or purchased feasibility.

(5) Set out in detail the amount of connection charges or demand charges, if any, to be made by the supplier as a condition to making the service available to the association. However, the payment of such charges from loan funds should not be approved unless the State Director determines that it is more feasible and economical for the association to pay such a connection charge than it is for the association to provide the necessary water supply by other means.

(6) Provide for a pledge of the contract to the FHA as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned or operated by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for or agreements to the future sale or transfer of association assets to the supplier, whether or not such sale or transfer would be for a monetary consideration.

(d) *Contracts for other services.* Contracts or other forms of agreement for services such as waste treatment will be developed by the applicant and presented to the County Supervisor. The State Director may approve such forms with the assistance of the OGC provided they meet the requirements of paragraph (c) (2), (4), (5), (6), and (7) of this section, and are otherwise acceptable.

§ 1823.14 Facility control.

Each association must obtain such control over its project area as will be necessary to accomplish its objectives. The control may be obtained by means of deeds, satisfactory contracts, permits, and leases with private landowners, or public agencies having appropriate jurisdiction.

§ 1823.15 Purchase price of land and rights, existing facilities, and machinery and equipment.

(a) *Land, rights, and existing facilities.* (1) In those cases where land and rights in land being acquired do not represent relatively large purchase prices, the State Director will assure that they are being acquired at a reasonable price. He may require an appraisal report if there is reason to question the proposed purchase price.

(2) In those cases where relatively large or expensive tracts of land, or rights in land, and other such interest needed for facility development are being acquired, their purchase price will not exceed their present market value or the price established by the court in those cases where land or rights in land are being acquired through condemnation.

(3) In all cases where existing facilities are being acquired, the purchase price will not exceed their present market value.

(4) Present market value will be determined only after a review of an appraisal report prepared in accordance with § 1823.16.

(b) *Machinery and equipment.* Where substantial amounts of funds are necessary for purchase of machinery and equipment, associations ordinarily will be required to call for bids in a manner specified by the loan approval official to assure the best obtainable price.

§ 1823.16 Preparation of appraisal reports.

Reports will be prepared using Form FHA 442–10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements. Appraisal reports prepared for use in connection with the purchase of existing water and waste disposal facilities will be prepared by the FHA engineer or, if desired by the State Director, some other qualified appraiser.

§ 1823.17 Title to pledged assets.

The association will provide evidence of title satisfactory to the FHA for all assets which will constitute security for the loan.

(a) Whenever real estate other than easements, rights-of-way, or similar interest will be taken as security, the applicant should furnish the County Supervisor with a copy of its deed or purchase contract and any mortgage or other lien on the property offered as security. If water stock is being offered as security for the loan, the applicant should furnish the stock certificate. The other title evidence furnished will be one of the following:

(1) An opinion of title prepared by the applicant's attorney. This opinion may be on Forms FHA 427–9, "Preliminary Title Opinion," and FHA 427–10, "Final Title Opinion." The opinion will be based upon an examination of the public records or a current abstract of title, or a combination thereof, in accordance with the practice in the community. If based on an abstract of title, the abstract and abstractor's certificate must cover all matters below. If the abstractor's certificate or certificates are limited in any way, they must be supplemented by the attorney's own examination of records or other competent evidence of title. The opinion of title will set forth the ownership and condition of the title to the land, the manner in which title was acquired, and will list all unreleased mortgages, judgments, unpaid taxes, liens, or other encumbrances, pending suits, reservations, exceptions, leases, easements, and any other outstanding interest. The title search must cover such period as the examining attorney determines necessary to issue his opinion as to whether the title is good and marketable according to title examination standards prevailing in the area, except that title examination need not go back beyond a Farm Ownership (FO), Rural Housing (RH), or individual SW (not Water Facilities) security instruments. If the examining attorney finds an FHA security instrument in the chain of title and is not certain that it is one of the types mentioned in the preceding sentence, he may consult the County Supervisor.

(2) Policy of title insurance obtained from a title insurance company approved by FHA.

(b) Applicants will be responsible for obtaining adequate, continuous, and valid rights-of-way for the construction, operation, and maintenance of its facilities.

(1) The applicant will submit the following documentary evidence to the FHA:

(i) Copies of the right-of-way instruments. Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances. Whenever the form of the instrument differs from Form FHA 442–20, "Right-of-Way Easement," or contains special provisions that are required by either the applicant or the grantor, copies of such instruments will be submitted to the FHA for review prior to acceptance and recording. Either specific rights-of-way containing a legal property description or a centerline description of the rights-of-way, or general rights-of-way containing only a description of the tract or parcel of land affected, may be used.

(ii) A certificate by a duly authorized official of the applicant that it has obtained and presently holds adequate and sufficient legal title to all rights-of-way, permits, licenses, and other authorizations deemed necessary by the applicant, its engineer, and its attorney for an uninterrupted right-of-way for the construction, operation, and maintenance of the facilities. Use Form FHA 442–21, "Right-of-Way Certificate."

(iii) A right-of-way map showing the location of all structures, pipelines, ditches, and the like. When completed, the map should show that the rights-of-way are continuous with no gaps. Rights-of-way acquired by use or adverse possession will be shown by some distinctive

color. This map will be prepared by the applicant's engineer and it will bear the signature of the engineer and the presiding official of the applicant.

(iv) An opinion of the applicant's attorney relating to the adequacy and legality of the rights-of-way covered by the right-of-way certificate and right-of-way map. Use Form FHA 442–22, "Opinion of Counsel Relative to Rights-of-Way," to the extent possible. Subordinations will not ordinarily be obtained and will never be required from FHA.

(2) When a lien will be taken on a site for structures such as a reservoir or pumping station, and the applicant is able to obtain only a right-of-way or easement on such site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing the ownership of the land and all mortgages or other liens, defects, or encumbrances, if any. The title report will cover the same period of time prescribed in paragraph (a) (1) of this section. Consents, releases, or subordinations will be obtained from the holders of outstanding liens or mortgages as may be required by the FHA.

(c) When a mortgage or an assignment will be taken on water rights owned or to be acquired by the association, the following will be furnished as applicable:

(1) A statement by the association's attorney regarding the nature of the water right owned or to be acquired by the applicant (conveyance of title, appropriation and decree, application and permit, public notice of appropriations and use, and so forth).

(2) A copy of any contract with another company or municipality to supply water or stock certificate in another company representing right to receive water.

(d) When liens will be taken on chattel property, the following will be furnished:

(1) Description of the property for use in preparing the security instruments.

(2) Form FHA 440–13, "Report of Lien Search," or similar form prepared in accordance with the State requirement prescribing the use of such form for operating loans.

(e) If the information supplied is not consistent with information in the report on application, the applicant must furnish a full explanation of the variations satisfactory to the FHA. The applicant will be required to furnish such additional title evidence as may be called for by the representative of the OGC.

(f) All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed. The opinion of title or title insurance policy and any water stock certificates will be retained in the borrower's County Office case folder.

§ 1823.18 Title to unpledged land rights.

Applicants whose land rights are not to be pledged as security will submit evidence of title in accordance with § 1823.17 (b) (1) (ii) and (iii).

§ 1823.19 Affect of special programs—regulations.

Loans and grants to which this subpart pertains are affected as shown below by certain special programs, regulations, and laws.

(a) *Equal opportunity in employment for construction.* This applies to all loans and grants which may involve construction work exceeding $10,000 to be paid for in whole or in part with FHA loan or grant funds. (See Part 1890p of this chapter.)

(b) *Pledging collateral for deposits of funds in supervised bank accounts.* Collateral must be pledged for all supervised bank accounts in excess of $20,000 for projects being financed under this subpart.

(c) *Nondiscrimination by recipients of Farmers Home Administration financial assistance in accordance with title VI of the Civil Rights Act of 1964.* This applies to direct loans, loans made from ACIF, and grants. (See Part 1890 of this chapter.)

(a) *Davis-Bacon and related acts.* The provisions of the Davis-Bacon and related acts do not apply to loans or grants made by FHA under this subpart. The act may apply to portions of such projects which are being financed in part by other Federal agencies. In such cases, it will be the responsibility of such other Federal agencies to assure compliance unless some other agreement has been reached with the other agency. (See Part 1890 of this chapter.)

§ 1823.20 Applications.

Each applicant will make application on Standard Form 101, "Preliminary Application for Requesting Federal Assistance for Public Works and Facility-Type Projects," which will be forwarded to the State Office in accordance with § 1823.35. County Supervisors will require any association undertaking to apply for financial assistance to file written notification of its intent to apply with appropriate clearinghouses in accordance with Subpart M of Part 1823 of this chapter. When the County Supervisor has been notified that FHA has assumed jurisdiction for the project, he will complete the applicable portion of Form FHA 442–34, "Information For Use in Establishing Processing Schedule," and forward it to the State Office. No further action will be taken toward processing such applications until notified by the State Director to proceed. The date that FHA assumes jurisdiction will be considered as the application date. Applicants need not be legally organized to file Standard Form 101.

§ 1823.21 County Committee recommendations.

Just as soon as adequate information has been assembled on the association's application to enable the County Committee to make its recommendations, the proposal will be presented to the Committee by the County Supervisor. Committee recommendations will be made on Form FHA 440–2, "County Committee Certification or Recommendation."

§ 1823.22 Dockets.

(a) *Content.* The loan docket will include the forms and documents listed in instructions available in all FHA offices.

(b) *Assembly.* Dockets ordinarily will be assembled to include all forms and documents required. However, when considerable time or expense will be involved, dockets may be submitted without complete construction contract documents and without all legal work being finalized. In such cases, the docket will include a preliminary engineering report prepared in accordance with this subpart. Although all legal work in connection with organization and processing items, such as bonds and ordinances, may not yet be complete, the proposed form of such bonds and ordinances and other similar items will be included in the docket.

(c) *Coordinating docket preparation.* The County Supervisor is responsible for coordinating the development of association dockets. In order to successfully carry out this responsibility, he must make maximum use of conferences with applicant representatives, checklists designed to provide for continuous monitoring of progress in docket development, and other measures to assure effective liaison and communication between him, the applicant, and the applicant's technical and professional consultants.

(1) Each applicant should be requested to name an individual and an alternate whom the County Supervisor may contact in connection with association business. These individuals should be members of the applicant's governing body or organizing committee, not the applicant's engineer, architect, or attorney. The County Supervisor must accomplish his work with the applicant through the designated representative except where otherwise provided in this subpart.

(2) As soon as the County Supervisor has been notified by the State Director to proceed with processing, he will discuss matters such as application processing, the applicant's need for an engineer, architect, or other consultant, and an attorney, and other such items with the governing body or organizing committee. At this meeting, the County Supervisor will initiate use of a processing checklist for establishing a time schedule for completion of items. Use Form FHA 424–39, "Processing Checklist (Other than Public Bodies)," or Form FHA 442–40, "Processing Checklist (Public Bodies)," or if desired, an approved State form for this purpose. Immediately following the discussion, he will confirm by letter to the applicant the decisions made and forward a copy of the processing checklist. He will retain a copy of the processing checklist and forward a copy to the State Office through his District Supervisor. The District Supervisor will assist each of his County Supervisors in conducting such conferences until it is established that the County Supervisor likely will be able to successfully carry on such conferences without assistance.

(3) As soon as the applicant has selected its engineer, and prior to commencing facility planning, the County Supervisor will hold a "preplanning" conference with members of the association's governing body or organizing committee and its engineer. At this conference, development of the preliminary engineering report or complete development plans, whichever is appropriate, will be discussed in detail to assure that the applicant and its engineer understand FHA design policies, as well as their respective responsibilities. FHA policies and requirements regarding service areas and providing service to all within such areas desiring service will be thoroughly explained at the preplanning conference. The applicant and its engineer will be given copies of appropriate guidance material and forms, and the County Supervisor will thoroughly discuss items to be completed by the engineer. In this activity, the County Supervisor will be assisted by the District Supervisor and State Office personnel. The processing checklist will be updated and extended to include additional items discussed at the conference. Again, decisions reached will be confirmed by letter and the processing checklist extended.

(4) As the application is being processed, and the need develops for additional conferences, the County Supervisor will call such conferences, extend and update the processing checklist, and confirm by letter the decisions made.

(5) All processing checklists will be submitted to the State Office through the District Supervisor. If an extended and updated checklist for each application in process has not been submitted during the month, it will be submitted no later than the close of business on the last working day of the month. On receipt of an extended or updated checklist, the State Director will return the checklist on hand to the County Supervisor. This copy may be used by the County Supervisor for future submissions.

(d) *Preparation of bonds and bond transcript documents.* Appendix 3, § 1823.53 contains FHA requirements pertaining to preparation of bonds and bond transcripts for loans to public bodies. For such loans, copies of Appendix 3 will be handed to the applicant for use by its attorney and bond counsel at the preplanning conference. Additional copies of this appendix may be requisitioned from the Finance Office.

(e) *Preliminary determination for development grants.* In order that most beneficial use be made of available development grant funds, State Directors will make a determination regarding each such grant before it is considered in the development of a docket. County Supervisors will submit to their State Office the following material as soon as it is available in connection with each application for a development grant for which a docket is being assembled: Preliminary engineering report; draft budget on Form FHA 442–7, "Operation Budget or Statement of Income and Expenses" (without taking into consideration any grant); information in narrative form pertaining to income levels in the applicant community, emergency, health, economic, and other factors which may appear pertinent.

(1) If the plans are for a system of acceptable design and the proposed budget indicates that requirements of §§ 1823.4 and 1823.6 will be met, the State Director will proceed to determine the amount of the grant in accordance with § 1823.4 (c). He will inform the County Supervisor of his tentative determination and return the material submitted to the County Office.

(2) State Directors will assemble for their use in making these determinations information regarding user costs throughout the State.

(3) The County Supervisor will proceed with docket preparation. He will be cautious, however, to be sure that he, in no way, leads the applicant's representatives to believe that a grant has been approved or that the amount of the grant has been finally determined until he has received notice of approval.

§ 1823.23 Review and approval.

(a) *Approval official review.* The loan approval official will review the docket to determine that:

(1) The County Committee's recommendation has been properly completed and signed by at least two committeemen, neither of whom is a member of the applicant association.

(2) The applicant is eligible.

(3) The funds are requested for authorized purposes.

(4) The proposal is sound.

(5) All other pertinent requirements are, or apparently can be met.

(6) The facility has been planned and designed within the criteria established by this subpart. The State FHA-Engineer will complete Form FHA 424–14, "Design Evaluation—Domestic Water System," for each central domestic water system and Form FHA 424–15, "Design Evaluation—Waste Disposal System," for each central domestic waste disposal system.

(7) Adequate credit at reasonable rates and terms is not available.

(i) This determination for public body applicants for loans not over $50,000 and for other than public body applicants will be based on information available to the State Director. If the docket does not contain information sufficient for him to arrive at the determination, he may request the applicant to seek other credit and present evidence of the results of such action or he may make inquiry regarding other credit.

(ii) Final determination regarding the availability of other credit for tax-exempt public bodies applying for loans in excess of $50,000 will be made as required in § 1823.25(e).

(8) The articles of incorporation, bylaws, rules and regulations, or other official documents contain no restrictions that would limit use of the facilities due to race, color, creed, or national origin.

(9) Each proposal is based on a realistic user estimate. (i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions to existing systems, consideration should be given to the following:

(*a*) It will likely be several years before all residents in the community will need the services provided by the system.

(*b*) The maximum estimated number of initial users should not be used when setting user fees and rates. Reduce the user estimate to a realistic number and compensate for the reduction by raising the fees and rates.

(*c*) User agreements from vacant lot owners must not be considered when determining feasibility. Income from these sources will be considered only as extra income.

(ii) In order to establish realistic user estimates, the following are required:

(*a*) *Enforceable user agreement with penalty clause.* In those cases where all or a part of the project revenues will come from service fees, an enforceable user's agreement will be required unless State statutes or local ordinances require mandatory use of the system and the applicant agrees in writing to vigorously seek enforcement of such statutes or ordinances. Such user agreements will provide for meaningful, enforceable penalties for failures to connect to the system. Users presently receiving service will not ordinarily be required to sign a user's agreement.

(*b*) *Meaningful user cash contribution.* Contributions will be high enough to indicate sincere interest on the part of the user but not so high as to preclude service to low-income families. Contributions ordinarily will be an amount approximating 1 year's minimum use fees and will be paid in full before loan closing. User cash contributions are required except: In connection with loans secured by general obligation bonds; for users presently receiving service; in those cases where the State Director determines that users cannot make a cash contribution; or, the user agreement under item (*a*) of this subdivision is not required.

(*c*) *An audit of user list and user agreements.* Such audit must show that there are sufficient users who have made the required cash contribution and have agreed to pay fees in an amount adequate to support the budget. See § 1823.25(b) for conducting the audit.

(*d*) *Borrower user connection program.* In those cases where all or a part of the borrower's revenues will come from user fees, applicants must provide, for review and approval by the State Director before loan closing, a positive program to encourage connection by all users as soon as service is available. Such program shall include:

(*1*) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, the date users will be expected to have their connections completed, and the date user charges will begin.

(2) Positive steps to assure that installation services will be available. These

may be provided by the contractor installing the system, local plumbing companies, or small contractors.

(3) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan and grant funds for this purpose; however, such funds should be used only when absolutely necessary.

(b) *Letter of conditions.* If the proposal appears to be sound and proper, the approval official will prepare a letter of conditions listing all requirements which the applicant must agree to meet within a specified time. All letters of conditions will be addressed to the applicant, signed by the County Supervisor, and mailed or handed to the appropriate applicant representatives by the County Supervisor.

(1) Requirements listed in letters of conditions for FHA loans or FHA loan and grant combinations will ordinarily include those relative to:

(i) Maximum amount of loan or grant which may be considered.

(ii) Term of loan and any deferment.

(iii) Number of users (members) and verification required.

(iv) Contributions.

(v) Interim financing.

(vi) Security requirements.

(vii) Title to property.

(viii) Organization.

(ix) Business operations.

(x) Insurance and bonding.

(xi) Construction contract, documents, and bidding.

(xii) Accounts, records, and audit reports required.

(xiii) Advertising for private lenders and execution of loan agreement by tax-exempt public body applicants.

(xiv) Adoption of Form FHA 442–9, "Association Loan Resolution," for other than public bodies.

(xv) Closing instructions.

(xvi) Other requirements which must be met and forms to be completed.

(2) Letters of conditions for grants only (no FHA loan) applicants ordinarily will be concerned only with those matters necessary to assure that the proposed development is completed in accordance with approved plans; that such grant funds are expended for authorized purposes; and, that the terms of the grant agreement are complied with.

(3) Each letter of conditions will contain the following as the first three paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application.

This letter is not to be considered as (loan) (and) (grant) approval or as a representation as to the availability of funds. The docket may be completed on the basis of a (loan not to exceed $----------) (and) (grant not to exceed $----------). If FHA makes the loan, the interest rate will be that charged by FHA at the time of the loan approval.

Please complete and return the attached Form FHA 442–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(c) *Project summary.* Upon authorizing the County Supervisor to issue the letter of conditions, the State Director will immediately forward one copy of Form FHA 442–45, "Project Summary—Water, and Waste Disposal," and Form FHA 424–14 and/or Form FHA 424–15 to the National Office, Attn.; Community Services Division.

(d) *Docket processing.* Docket processing will be accomplished expeditiously and in accordance with the following:

(1) The County Supervisor will forward the docket to the State Director for review. The State Director will prepare the letter of conditions and forward it to the County Supervisor along with a memorandum authorizing the County Supervisor to sign the letter of conditions. The County Supervisor will proceed in accordance with subparagraph (3) of this paragraph.

(2) If National Office authorization is required for loan or grant approval the State Director will:

(i) Forward to the National Office only the following material assembled in the following order from top to bottom:

(*a*) Transmittal memorandum including:

(*1*) Recommendation.

(*2*) Position of the project on the current processing schedule.

(*3*) Date that you expect to obligate funds.

(*4*) If the request is for an increase in the amount of loan or grant, indicate whether the loan or grant has been obligated and, if obligated, the date of each obligation.

(*5*) If the request is for a subsequent loan and/or grant, indicate the date the initial loan and grant funds were obligated. If the initial loan and grant have been closed, indicate the date of loan closing.

(*6*) If the request is for an increase in the amount of the loan and the grant is not being increased, indicate the changes in economic conditions that will enable the users to pay higher user rates than previously established.

(*7*) If the project is dependent on a grant from another Federal agency, State, or other source, indicate source and if a commitment for the grant has been made from the other source.

(*8*) If loan request is for a subsequent loan, indicate amount outstanding and repayment status of such loan.

(*9*) Any other unusual circumstances that should be brought to the attention of the National Office.

(*b*) Copies of the following:

(*1*) Proposed letter of conditions.

(*2*) Comments from the applicable State, Regional, and metropolitan clearinghouses.

(*3*) Form FHA 442–45.

(*4*) Form FHA 442–7.

(*5*) Preliminary Engineering Report.

(*6*) Forms FHA 424–14 and/or FHA 424–15.

(*7*) Map of area to show relation of the proposed project to the nearest urban area. A copy of a road map may be used.

(*8*) Form FHA 442–3, "Balance Sheet."

(*9*) Other forms and documents on which there are specific questions. No other forms or documents are to be submitted.

(ii) Send the County Supervisor and District Supervisor an information copy of his transmittal memorandum.

(iii) On receipt of National Office authorization to approve, the State Director and County Supervisor will proceed as in subparagraph (1) of this paragraph. If after construction bids are opened it is found that the project costs will exceed the amounts on which the National Office authorization is based and such costs cannot be reduced by negotiation, redesign, use of bid alternates, or other means, the amounts of the loan and grant (either or both) may be increased up to 10 percent without further approval of the National Office.

(3) The County Supervisor will sign the letter of conditions, discuss its requirements with applicant representatives, and afford them an opportunity to execute Form FHA 442–46.

(i) If the applicant declines to execute Form FHA 442–46, the County Supervisor will immediately notify the State Director and provide him complete information as to the reasons for such declination. He will provide the District Supervisor with an information copy of his report.

(ii) If the applicant executed Form FHA 442–46, the County Supervisor will complete Form(s) FHA 442–14, "Association Project Fund Analysis," Form FHA 440–1, "Payment Authorization," and Form FHA 440–3, "Record of Actions," and forward the original and one copy of (each) Form FHA 442–14 and Forms FHA 440–1 and FHA 440–3 to the State Director.

(4) The County Supervisor will assist all applicants in the completion of their dockets. Completed dockets will be forwarded to the State Director for review and transmittal to the CGC for preparation of closing instructions.

(5) The State Director is responsible for approval of all construction contracts, utilizing the legal advice and guidance of the OGC where necessary.

(6) The OGC will forward all closing instructions to the State Office where they will be reviewed and forwarded to the County Supervisor.

(e) *Obligating funds.* State Directors may obligate funds when they are available and in accordance with the following:

(1) Funds may not be obligated until the applicant has legal authority to contract for a loan or grant and enter into the required agreements. Funds must be obligated in multiples of $100.

(2) The approval official must have executed a completed copy of Form FHA 440–1 and mailed or handed an executed completed copy to the applicant. The original and one copy must be sent to the Finance Office.

(3) If approval was authorized by the National Office, a copy of the memorandum authorizing approval will be attached to the original of Form FHA 440–3.

(4) When use of fund reservation request procedures are required, the State Director will forward the original and one copy of (each) Form FHA 442–14 to the Finance Office for fund reservation. The Finance Office will return the copy of (each) Form FHA 442–14 stamped "Funds Reserved, date" to the State Director as soon as funds are available for the project. When the State Director receives notice that funds are reserved, he will forward the press release to the National Office and cause the obligating documents to be executed and distributed in accordance with applicable instructions. Obligating documents must be forwarded to the Finance Office within 15 days after receipt of the notice that funds are reserved. If it is determined that the funds should not be obligated, a memorandum will be sent to the Finance Office to cancel the reservation of funds.

§ 1823.24 State Office controls.

Each State Director will establish and maintain sufficient records to assure adequate supervision of his loan and grant allocations. Such records should be maintained for each type of fund and purpose (for example, direct loans—waste disposal) and should contain at least the following: Amount of allocations, date initial and subsequent allocations received; amount reserved for use through the issuance of a letter of conditions, along with the name of the applicant, date funds will likely be needed; amounts and dates of obligations showing the name of the applicant and the date funds will likely be needed; and, current totals unreserved and unobligated.

(a) It is necessary that State Directors maintain processing schedules current and keep their District and County Supervisors currently informed regarding those applications which are to be processed and the availability of funds for such applications.

(b) Form FHA 440–36, "Association or Organization Activity Card," will be maintained for each applicant.

§ 1823.25 Preparation for loan and grant closing.

(a) *Preparation for closing.* Upon receipt of closing instructions, the County Supervisor will:

(1) Discuss with the association's governing body and its architect or engineer, attorney, and other appropriate association representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Hand the association officers three copies of the closing instructions.

(3) Plan carefully with association officers the timing of all steps to be taken before closing.

(b) *User (member) and cash contribution audit and verification.* The State Director will require a member of his immediate staff or the District Supervisor to authenticate the number of users obtained. Such individual will review each signed user agreement and check evidence of cash contributions. If during his review, he receives any indication that all signed users may not connect to the system, he will make such additional investigation as he deems necessary to determine the number of users who will connect to the system. He will record his determination in a memorandum to the State Director in which he will state at least the following:

(1) He has reviewed all signed users agreements and evidence of cash contributions and has determined that the number of signed users and the cash contributions equal or exceed the requirements set forth in the letter of conditions.

(2) The results of any additional investigations he may have made.

(3) All other requirements for closing have been met.

(4) If for any reason the signed user agreements or the cash contributions are less than those required by the letter of conditions, he will forward a memorandum to the State Director setting forth his recommendations. The State Director will review the findings and arrange for such further investigation as he deems necessary. He may find that the applicant needs additional time to sign more users or that the project may be feasible with fewer users and increased rates. If the State Director determines that a rate adjustment is necessary, he will notify the County Supervisor to have the applicant present a new budget. There may be cases where the State Director will determine that there is insufficient interest on the part of the potential users and that the applicant is not ready for a system. In such cases, the applicant will be notified by letter.

(c) *Preloan closing compliance review.* The staff member or District Supervisor conducting the audit and verification required by paragraph (b) of this section, will also complete Form FHA 400–8, "Annual Compliance Review." A copy of the form will be forwarded to the State Director and a copy filed in the County Office docket.

(d) *Determining whether the project can be constructed within estimate.* If it appears that the applicant will be able and is ready to meet the closing requirements, the State Director must determine whether the facility likely can be constructed for an amount within the estimate. In order to make this determination, he may require that construction contract bids be invited and opened prior to further processing. Construction contract bids will be invited and opened in all cases prior to loan and grant closing, unless an exception is made by the State Director. This will be accomplished in accordance with the requirements of this subpart.

(e) *Determining availability of loan funds from other sources at reasonable rates and terms.* Each tax-exempt public body applicant for a loan in excess of $50,000 will be required to offer its bonds for sale as soon as it has been determined that the facility can be completed within the estimate.

(1) FHA will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably, FHA will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where FHA is required to bid, the bid will be made at the applicable FHA interest rate. If there is more than one acceptable bid offering the same net interest cost, the applicant may negotiate with these bidders in selecting a lender. However, if FHA is not making the loan or a grant, it need not be concerned with such negotiations.

(2) Appendix 3, § 1823.53 contains instructions pertaining to notices of sale, advertising, and other information relative to the sale of bonds.

(f) *Notification to bidders.* Whenever certified checks or other forms of bid deposits are required in connection with an advertised sale of bonds, the County Supervisor must make certain that the deposits of the unsuccessful bidders are returned immediately upon formal determination of the successful bidder. Under no circumstances should such checks or other forms of bid deposits be destroyed. Use Form FHA 442–27, "Notice to Successful Bidder," and Form FHA 442–26, "Notice to Unsuccessful Bidder," to notify successful and unsuccessful bidders. All such notifications will be signed by the association. The State Director will sign the approval on the notification to the successful bidder, if he approves the bid. As soon as each sale has been held the State Director will forward a compilation of bids received to the National Office.

(g) *Ordering loan checks.* Checks will not be ordered until:

(1) The signed copy of Form FHA 440–3 has been received from the Finance Office.

(2) The association has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The association is ready to start construction or proceed with development.

(4) No increase or decrease in the amount of the loan or grant is contemplated. If it becomes evident at or before closing that the amount of the funds should be decreased or increased, the County Supervisor will request that all distributed docket forms be returned to him for revision and proceed with the revised docket.

(5) For a direct loan or grant the County Supervisor will check the block for issuance of the check on a copy of Form FHA 440–3, sign the form, insert the date of signature, and forward it to the Finance Office. For loans or grants with more than one advance, an extra copy of Form FHA 440–3 will be prepared and submitted to the Finance Office for each subsequent advance.

(6) Order insured loan checks in accordance with Part 1812 of this chapter.

(h) *Ordering development grant checks.* The policy of FHA is not to disburse grant funds from the Treasury until they are actually needed by the applicant. If grant funds are available from other agencies and they are transferred to the Finance Office for disbursement by FHA, these grant funds should be used before FHA grant funds.

(1) In order to comply with this policy, the County Supervisor will send the Finance Office a request for a grant check so that the check will be received in the County Office not more than 10 days before the estimated date the applicant will expend the grant funds. If the County Supervisor, upon receiving a grant check after the grant is closed, determines that more than 20 days will elapse before the first grant funds are needed by the applicant, he will return the check to the Regional Disbursing Center, U.S. Treasury Department, Post Office Box 2509, Kansas City, MO 64142, and specify a remailing date.

(2) All grant funds which the applicant will expend within a 30-day period will be included in one advance. When the amount of the grant does not exceed $20,000, the entire grant will be disbursed in one advance. When neither of the foregoing situations prevails, multiple advances will be made to effect the procedure outlined in subparagraph (1) of this paragraph, except that when the balance is $20,000 or less, the remaining grant funds may be drawn in one advance.

(i) *Interim financing from commercial sources.* In all cases of FHA loans, exceeding $50,000, to public bodies and nonpublic bodies, where it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FHA funds. Interim commercial financing is not required for that portion of the project to be financed with a development grant. When interim commercial financing is used, the docket will be processed—including obtaining construction and bond bids—to the stage where the FHA loan would normally be closed, that is immediately prior to the start of construction. FHA loan and grant funds will be obligated before the applicant proceeds with the final arrangements for interim commercial financing. The FHA State Director or County Supervisor may deliver a copy of Form FHA 440–1 as evidence of the FHA commitment, if necessary, or a letter stating that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions. FHA will assume the same responsibilities as if FHA funds had been advanced from the standpoint of approving construction contracts and the supervision of construction. The supervised bank account will normally not be used for funds obtained through interim commercial financing. However, the County Supervisor will approve Form FHA 424–18, "Partial Payment Estimate," to insure that funds are used for authorized purposes. When the interim financing funds have been expended, the FHA loan will be closed and permanent instruments will be issued to evidence the FHA indebtedness. The FHA loan proceeds will be used to retire the interim commercial indebtedness. Before the FHA loan is closed, the applicant will be required to provide the County Supervisor with statements from the contractor(s), engineer and attorney that they have been paid to date in accordance with their contracts or other agreements.

(j) *Multiple advances of FHA loan funds.* In the event interim commercial financing is not available, multiple advances of FHA loan funds are required. Multiple advances will be used in such cases for all loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than 2 years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(1) Appendix 3, § 1823.53 contains instructions for making advances to public bodies.

(2) Nonpublic bodies will evidence their indebtedness by using Form FHA 440–22, "Promissory Note (Association or Organization)."

(i) For insured loans, notes will be issued in amounts not to exceed $500,000 or that amount estimated necessary for an 8-month construction period, whichever is smaller. For example, when it appears that construction will require from 8 to 16 months, two notes will be used. If it appears that construction will require more than 16 months, three notes will be used. The first note will be for the amount estimated to be needed during the first 8 months. The second note will be for the balance of the loan if it estimated that construction will be completed in 16 months, or for the amount estimated to be needed the second 8 months if it appears that construction will require more than 16 months. In these cases, the third note will be for the balance of the loan. In any event, no note may exceed $500,000. This may require more than three notes.

(ii) For direct loans, only one note will be used to evidence the total amount of the loan.

(3) Loan funds will be included to pay interest in accordance with § 1823.5(b) and also interest on interim commercial financing. Funds to pay interest will be included in the last advance made prior to each interest payment date.

(4) When FHA provides loan funds during the construction period using interim financing instruments described in Appendix 3, § 1823.53, the following action will be taken prior to issuance of the permanent instruments.

(i) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(ii) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the County Supervisor.

(iii) The County Supervisor will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately. In developing the permanent instruments the sequence of preference set out in Appendix 3, § 1823.53 will be followed.

(5) Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The association will prepare Form FHA 440–11, "Estimate of Funds Needed," to show the amount of funds needed during the 30-day period. After the County Supervisor determines that the estimate prepared by the association is adequate, he will request the advance by executing and forwarding to the Finance Office, Form FHA 440–3. For instance, with a loan of $200,000, advances will be made as follows: Assuming that the loan will be closed on July 1, the association will complete Form FHA 440–11 in sufficient time so that funds will be available on the day of loan closing. The estimate should be broken down for the first advance in a manner similar to the following:

Construction	$43,000
Land acquisition	10,000
Engineering	14,000
Legal	3,000
Total	70,000

An advance in the amount of $70,000 would then be available on July 1, the day of loan closing. The second advance will also be based on the association's estimate prepared on Form FHA 440–11 and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$19,600
Engineering fees	400
Total	20,000

The same routine will be followed for each advance until the project is completed. In this example, the initial principal payment will be deferred until the second January 1 following loan closing. Loan funds for the payment of interest due on January 1, will be requested in sufficient time to be available in the December advance.

(6) Any deviation from the procedure for multiple advances of FHA loan funds must have the prior approval of the National Office.

(k) *Borrower and grant recipients receiving funds from other agencies.* County Supervisors will be sure that FHA borrowers and grant recipients expecting funds from other agencies such as EDA, EPA, and others for use in completing projects being partially financed with FHA funds have evidence that funds from such other agencies will be available at the time needed for construction of the project before closing the FHA loan or grant. If there are any questions regarding the availability of such funds,

the County Supervisor will report the complete circumstances to the State Director and request instructions for proceeding.

§ 1823.26 Loan and grant closing.

Loans and grants will be closed in accordance with the closing instructions issued by the OGC as soon as possible after receiving the check. A grant may be closed in accordance with instructions of the OGC as soon as the required instruments, including the grant agreement and any other necessary instruments have been executed.

(a) *Authority to execute, file, and record legal instruments.* Properly bonded County Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for association loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.

(b) *Preparation of mortgages.* Unless otherwise required by State law, or an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one note.

(c) *Preparation of promissory notes and bonds.* Notes and bonds will be completed to the extent possible on the date of loan closing. The amount of each note or bond will be in multiples of $100.

(1) Form FHM 440–22, will be used for loans to nonpublic bodies.

(2) Appendix 3, § 1823.53 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(3) The following types of provisions in instruments of debt should be avoided:

(i) Requirement that the holder manually post each payment to the instrument.

(ii) Requirement for returning the instrument to the borrower in order that it, rather than FHA, may post the date and amount of each multiple advance or repayment on the instrument.

(d) *Source of funds for insured loans.* (1) All insured loans to public bodies will be made from the ACIF and will not be offered to local lenders.

(2) For insured loans to other than public bodies, see Parts 1812 and 1873 of this chapter.

(e) *Obtaining development grant agreement.* Form FHA 442–31, "Association Water or Sewer System Grant Agreement," will be completed and executed in accordance with requirements of approval and closing instructions. Both County Supervisors and State Directors are authorized to sign the grant agreement on behalf of the FHA. For grants that supplement FHA loan funds, the grant should be closed simultaneously with the closing of the loan. The grant will be considered closed when Form FHA 442–31 has been properly executed. The original should be forwarded to the Finance Office immediately after execution.

(f) *Payment of fees and costs.* Statutory fees and other charges for filing or recording mortgages or other legal instruments, and notary and lien search fees incident to loan transactions will be paid by the association from its own funds or from the proceeds of the loan. Whenever cash is accepted by FHA personnel to be used to pay the filing or recording fees or the cost of making lien searches, Form FHA 440–12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed.

(g) *Obtaining insurance, fidelity bonds, and assignments.* Required property insurance policies, liability insurance policies, fidelity bonds, and assignments will be obtained by the time of loan closing.

(h) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not required by the loan approval official to be held by the FHA will be returned to the association.

(i) *Posting management system records.* Record on Form FHA 405–10, "Management System Card—Association," any actions to be completed subsequent to loan closing.

(j) *Use of and accountability for funds.* (1) Loan and grant funds and any funds furnished by the association to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings will be deposited and handled in accordance with Part 1803 of this chapter in a bank in which deposits are covered by Federal Deposit Insurance. The funds so deposited in a supervised bank account are public monies under title 12, section 265, United States Code, because they are subject to control by an employee of the United States, and therefore, if the amount deposited exceeds $20,000 the bank will be required to pledge collateral security for such excess pursuant to Treasury Department Circular No. 176 before the funds are deposited.

(2) If the financial operations of the association are so limited by State laws, or by other special circumstances, that use of a supervised bank account is impossible, loan funds and applicant contributions may be deposited in a special bank account without provision for countersignature of checks or warrants by the County Supervisor. In such cases, arrangements must be agreed upon for the prior approval by the County Supervisor of the bills or vouchers upon which warrants will be drawn so that the necessary control of payments from loan funds can be maintained and records in the County Office can be kept current. Periodic audits of such accounts should be made by the County Supervisor at such times and in such manner as the State Director will prescribe in the conditions of loan approval, and suitable followups should be established in the management system. If the applicable State laws contain specific and mandatory provisions regulating the depositaries to be used, the security given by the depositary for funds of the association, or the bond required of the association, or the bond required of the association's treasurer, such requirements should be complied with. If, however, there are no such mandatory provisions in the State laws, the State Director should include in his conditions for loan approval requirements for the protection of the loan funds by the depositary, placing in escrow or pledging sufficient obligations of the United States or furnishing a good and sufficient bond by a reputable surety company authorized to do business in the State. If other types of protection of the loan or grant funds are proposed, they should be submitted to the Administrator for approval.

(3) Careful accounting is also necessary to see that FHA loan and grant funds will be used for authorized purposes.

(i) It will be necessary to make sure that the total grant funds advanced do not exceed the approved percentage of the total actual development cost. Borrower funds and loan funds will be disbursed from the supervised or special bank account before any grant funds are disbursed; but this provision will be subject to subdivision (iii) of this subparagraph when funds remain after project completion.

(ii) Should loan or grant funds remain available including obligated funds not advanced after all costs incident to the basic project have been paid or provided for, such funds may be used for needed extensions, enlargements, and improvements of the project with the prior permission of the State Director. If the additional work is to be undertaken by the contractor(s) already engaged in the construction of the project, the additional work may be authorized by a change order. If the amount of such loan or grant funds remaining available exceeds 20 percent of the project cost, the prior approval of the National Office will be obtained before any additional work is authorized by the State Director.

(iii) In those cases where funds remain after project completion, including any expenditures made as authorized in subdivision (ii) of this subparagraph, the remaining balance will be considered to include both loan and grant funds and the amount of each will be in direct proportion to the amount obtained or obligated from each source. For the purposes of this computation, that portion of the applicant's cash contribution which was deposited in the supervised or special bank account will be considered a part of the loan proceeds. For example, if FHA development grant funds represented 30 percent of the total loan and grant obligations plus such cash contributions of the applicant, 30 percent of the remaining funds will be identified as FHA development grant funds.

(iv) Obligated funds and any borrower contributions which are in the supervised or special bank account and remain after all authorized costs have been provided for will be disposed of as follows:

(*a*) Development grant funds in the amount determined under subdivision

(iii) of this subparagraph will be returned to the Finance Office.

(b) Loan funds and such contribution from the applicant will be returned to the Finance Office and applied as a refund payment on the loan unless other disposition is required by these instructions, by the bond ordinance or resolution or by State statutes. For tax-exempt bonds, see Appendix 3, § 1823.53 at the end of this subchapter.

(c) See Part 1862 of this chapter for instructions as to the method of returning loan and grant funds to the Finance Office.

(4) Whenever a check for a direct loan or grant or a loan from the ACIF is received, lost, or destroyed, the County Supervisor will take the appropriate actions. Checks which cannot be delivered within a reasonable amount of time, no more than 30 days, will be returned to the Regional Disbursing Office of the U.S. Treasury.

(5) If, for any reason, a loan check for an insured loan by a private lender cannot be delivered to the association, it will be returned to the lender with a request for cancellation. When a loan check is lost or destroyed, the County Supervisor will notify the lender immediately. If the association desires that a new check be issued the lender will be requested to issue a new check.

(6) When a loan check is issued payable jointly to the association and the FHA, the County Supervisor is authorized to endorse the check on behalf of the FHA at the time of loan closing as follows:

Endorsed without recourse:
Farmers Home Administration
By _____
Title _____

The State Director also is authorized to endorse such a check in the same manner. Authority to endorse such checks in no way relates to or modifies the regulations contained in Part 1862 of this chapter, regarding collection items, or the endorsement of such items.

(7) In those cases where there are funds in the construction account, that is the supervised bank account or special account, which are not immediately needed for the payment of development costs, excess funds may be:

(i) Deposited in an interest-bearing account in a bank (but not in a savings and loan association) which has qualified as a designated depository under § 1823.19(b). The account of deposits will be in the name of the association and the FHA County Supervisor, by title, under a three-party deposit agreement executed by the association, the bank, and the County Supervisor. Use Form FHA 402–4, "Interest-Bearing Deposit Agreement." The original of such three-party agreement will be delivered to the association, a signed copy will be placed on file with the bank, a signed copy will be placed in the association's case file, and a conformed copy will be attached to any certificate(s) of deposit which may be issued to represent such deposits.

(ii) Used by the association to purchase insured notes or bonds held by the FHA in the ACIF, if any such notes are available under any purchase policy then in effect. Upon such purchase, the association will sign a written agreement that it will not sell or assign the obligations purchased without the approval of the FHA, and that the proceeds of any such resale will be reinvested in similar obligations or will be deposited under the same conditions as original loan funds are deposited. For associations contemplating the purchase of insured notes or bonds, State Directors will contact the Director, Finance Office, well in advance of loan closing to determine that such notes will be available for purchase on terms which will permit the association to obtain cash when needed for authorized loan purposes.

(iii) Invested in obligations of the United States or in other obligations in which political subdivisions of the State are authorized to invest under applicable statutes (this is equally applicable to corporation borrowers) with prior approval of the State Director. Before approving such a request from the borrower, the State Director must be satisfied that adequate provisions are made for continued FHA control over such investments. For bearer obligations this may be accomplished by an escrow agreement with the depository bank whereby the bank agrees to retain custody of the bearer paper, subject to the joint signature of the borrower and the County Supervisor.

(8) All income from investments under subparagraph (7) (i), (ii), or (iii) of this paragraph must be deposited along with loan funds and be used for approved loan purposes or applied on the association's obligation to the FHA or in accordance with the bond ordinance or resolution. However, any income from the investment of grant funds shall be returned to FHA unless the grantee is a State. "State" includes instrumentalities of a State but not political subdivisions of a State. A State grantee is not accountable for interest earned on grant funds.

§ 1823.27 Actions subsequent to loan or grant closing.

(a) *Mortgages.* The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the association. The original instrument for both insured and direct loans if returnable after recording or filing will be retained in the association County Office case folder.

(b) *Notes.* For a direct loan, the original of the note, or for a loan from the ACIF, the original and a conformed copy of the note will be sent to the Finance Office immediately after loan closing. For an insured loan, not made out of the ACIF, the original of the note along with the properly executed insurance endorsement will be delivered or sent to the lender. A conformed copy of the note and insurance endorsement will be sent to the Finance Office.

(c) *Multiple advances—bond(s).* Where temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right hand corner of such paper by the County Office. The permanent bond(s) should be forwarded to the Finance Office as soon as possible after the last advance is made.

(d) *Bond registration record.* Form FHA 442–28, "Bond Registration Book," may be used as a guide to assist associations in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Development grant agreement.* The original will be forwarded to the Finance Office, a copy retained for the County Office docket, and a copy handed to the association.

(f) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the association when the loan has been closed.

(g) *Disbursement of funds.* Funds may be disbursed for authorized purposes as soon as the loan or grant has been closed.

(h) *Material for State Office.* When the loan or grant has been closed, the County Supervisor will submit to the State Director:

(1) The completed docket.

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(i) *State Office review of loan and grant closing.* The State Director will review the County Supervisor's statement concerning loan and grant closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the County Supervisor, including the executed contract documents with the certification of the association's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to the OGC for post review. OGC is responsible for reviewing the submitted material to determine whether all legal requirements have been met. OGC will not review FHA's standard forms except for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the final opinion from OGC. When the opinion from OGC is received, the State Director will advise the County Supervisor of any deficiencies that must be corrected and return all material that was submitted for review.

(j) *Safeguarding bond shipments.* Shipments of negotiable notes or bonds and interest coupons will be by registered mail. When mailing registered bonds and other nonnegotiable bonds

and coupons which generally are made payable to the named party, certified mail will be used.

(k) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the County Office.

§ 1823.28 Applications not receiving favorable consideration and loan or grant cancellation.

(a) *Applications not favorably considered.* If at any time prior to loan or grant approval the County Supervisor is informed that favorable action will not be taken on an application, he will notify the association immediately informing it of the reasons why the request was not favorably considered.

(b) *Cancellation of loans or grants.* Loans or grants which have been approved and obligations which have been established may be canceled before closing as follows:

(1) The County Supervisor or State Director may prepare and execute Form FHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation." When a grant is being canceled, the form will be modified as appropriate.

(i) For an insured loan by a private lender, any checks advanced will be returned promptly to the lender with an explanatory letter.

(ii) For a direct loan or a loan made from the ACIF, if the check has been received or is received subsequently in the County Office, the County Supervisor will return it to the U.S. Treasury Regional Disbursing Office with a copy of Form FHA 440–10.

(2) If the docket previously has been forwarded to the OGC, that office will be notified of the cancellation by a copy of Form FHA 440–10.

(3) Any application for title insurance will be canceled in accordance with Part 1807 of this chapter. Likewise, the association's attorney and engineer if any should be notified of the cancellation. The County Supervisor may provide the association's attorney and engineer with a copy of his notification to the applicant.

§ 1823.29 Planning and performing development.

Appendix 1 (§§ 1823.36 through 1823.44) outlines FHA policies pertaining to planning and developing community water and waste disposal facilities. Copies of Appendix 1, together with State supplements necessary to comply with State laws or regulations are available in all FHA offices, and will be handed each applicant prior to the preplanning conference.

(a) *Project compliance.* No loan or grant will be closed unless the docket contains written evidence that the project is in compliance with State and local laws and regulations and comprehensive area and other development plans.

(b) *Projects with facilities located in flood plains.* Facilities may be located in flood plains only after careful evaluation of the proposal and a determination by the State Director that flood damage will not likely occur.

(c) *Preplanning conference.* The County Supervisor or other FHA employee designated by the State Director is responsible for holding the preplanning conference.

(d) *Preliminary engineering reports.* The County Supervisor or other FHA employee designated by the State Director will review all preliminary engineering reports prior to submittting them to the State Office to be sure that they contain all major items listed in the format for preparing preliminary engineering reports.

(e) *Projects requiring National Office review.* The review and approval of the National Office is required for the following facilities:

(1) Water storage reservoirs which exceed 20 feet in height measured between the upstream toe of the embankment to the crest of the dam and structures which will impound 15 or more acre feet of water. Plans and specifications for such facilities will be submitted prior to their review and approval by appropriate State agencies and after having been reviewed and found satisfactory by the State Director.

(2) Water systems which will provide peak flows of less than 1 gallon per minute per user. Submit the preliminary engineering report and clearinghouse comments prior to the issuance of the letter of conditions.

(3) Pressure or vacuum sewerage systems. Submit the preliminary engineering report and clearinghouse comments prior to the issuance of the letter of conditions.

(4) Solid waste disposal systems involving composting, recycling, or incineration. Submit the preliminary proposal prior to the issuance of the letter of conditions.

(f) *Form FHA 442–19, "Agreement for Engineering Services."* (1) Each State Director will have an Attachment I to Form FHA 442–19 showing the recognized and accepted schedule of suggested engineering fees observed in his State. Such schedules should, insofar as possible, have the concurrence of the engineering practitioners and will be submitted for approval to the National Office prior to utilization as an attachment to Form FHA 442–19 for use in their State(s). Such supplements will be made on a State basis in order to fit needs for the State and will not be done on a project basis. Sufficient space has been left at the end of each lettered section for making necessary additions.

(2) Applicants unable to provide planning assistance: If an applicant does not have the resources to pay for project planning work, cannot arrange to have it done on credit, has no qualified personnel to do such work, and the technical assistance required is not available from other Federal or other public agencies, FHA may provide the necessary planning assistance by utilizing the services of available FHA personnel.

(g) *Plans and specifications review.* Plans for all facilities to be financed with FHA loans or grants will be reviewed to be sure that such facilities are planned and designed in accordance with the criteria established in this subpart. The FHA engineer will complete Form FHA 424–14, for each community domestic water system, and Form FHA 424–15, for each waste disposal system.

(h) *Methods of performing development.* All development planned and agreed upon will be performed in accordance with § 1823.36 and the following unless the National Office has given prior approval to another method:

(1) *Borrower method of construction.* (i) Incidental items of construction. Cases involving relatively insignificant items such as landscaping, minor repairs to existing structures, fencing and other similar small items may be completed by the borrower method. The borrower method includes cases where the borrower purchases all material and hires labor to complete the particular improvement involved. Development funds should not be used to pay members of the borrower for labor; however, in justified cases, the State Director may authorize the use of development funds for special skilled labor performed by the members if the wages are not in excess of the average for similar skills in the area. Whenever it is necessary to obtain certain special services to complete portions of the project by the borrower method, a written lump-sum agreement or Form FHA 424–6, "Construction Contract," must be used to document the borrower obligation. Purchase of any necessary equipment will be evidenced by a purchase agreement or sales contract.

(ii) Applicants experienced in construction work. Communities which have sufficient management ability, available equipment, and experienced labor to adequately rehabilitate, extend, enlarge, or modify existing facilities may be authorized by the State Director to complete construction by the borrower method. All such construction must be completed in accordance with approved plans and specifications. Materials will be purchased through competitive bid awards. FHA funds may be used only for payment of expenses actually incurred in construction of the project. Such expenses will be evidenced by invoices which have been approved by the governing body.

(2) *Self-help method.* The self-help method of performing development is simply the borrower method applied to cases where it is imperative to utilize member labor contributions to develop a feasible project. In justifiable cases, with the approval of the State Director, this method of development may be used for water and waste disposal systems. The size of the project in which the self-help method may be used will be regulated by the ability and resources of the members and the availability of adequate supervision to make the method of development successful.

(i) *Construction contracts.* All contracts will contain a provision that they are not in full force and effect until they have been approved in writing by the FHA State Director. FHA will not become a party to a construction contract or incur any liability therefor.

(1) *Contract approval.* The State Director is responsible for approval of all construction contracts, utilizing the legal advice and guidance of the OGC where necessary. If the construction contract utilized the format of the model forms available in all FHA offices, or some other guide form which has been approved and issued by the State Office, it will not be necessary to submit individual contract documents to the OGC for prior approval. If, on the other hand, individual contract documents or attachments differ substantially from the model forms available in all FHA offices, or guides or forms already approved, they should be submitted to the OGC either separately or with the docket for review and approval before their use is authorized. The deviations from the approved guides or forms should be specifically enumerated by the State Director in his forwarding memorandum along with his comments and suggestions concerning the deviations.

(2) *Performance and payment bonds.* (i) Bonds assuring performance and payment of 100 percent of the contract cost including all contracts, whether negotiated or obtained through competitive bidding procedures, will be required in connection with each contract.

(ii) The State Director may waive the requirement for bonds on contracts of $50,000 or less if he determines that:

(*a*) More effective competition can be obtained if performance and payment bonds are not required.

(*b*) The borrower's interest will be more adequately served and the borrower agrees in writing that the performance and payment bonds are unnecessary.

(*c*) The Government's interests will be adequately protected.

(iii) The State Director may recommend an exception to the National Office only in exceptional cases when cogent reasons exist for waiving the performance and payment bond if the amount of the contract exceeds $50,000 and negotiations or competitive bidding procedures conducted in accordance with this subpart have not resulted in an acceptable contractor who can provide a bond.

(3) *Bid openings.* Bid openings will be attended by a representative of FHA.

(4) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(j) *Preconstruction conference.* FHA will arrange for the preconstruction conference.

(k) *Development inspections.* Unless the State Director designates another FHA representative, County Supervisors are responsible for monitoring the construction of all projects being financed, wholly or in part, with FHA funds. In all cases where the governing body has entered into an agreement for technical services with an engineer or if such services are being made available by another Federal or State agency the County Supervisor is authorized to countersign checks for payments as work progresses in accordance with estimates prepared by the engineer. Each payment estimate will contain a certification that all material purchased and all work performed is in accordance with the plans and specifications. Each payment estimate must also be approved by the governing body. Form FHA 424–18, "Partial Payment Estimate," may be used for this purpose. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the County Supervisor should notify the State Director immediately and withhold all payments on the contract. To assist the County Supervisor in evaluating project inspection, the engineer should furnish him a daily inspection report. A suggested format is available at any FHA office for preparing a suitable daily inspection report.

(l) *Changes in development plans.* Changes in the development plan requested by the borrower may be approved as follows:

(1) *Authority of the County Supervisor.* The County Supervisor is authorized to approve changes in development provided:

(i) The change will not represent a change in technical design of the facility.

(ii) Total project cost is not increased.

(2) *Authority of State Director.* The State Director is authorized to approve all additional changes not authorized by the County Supervisor, provided:

(i) The change is for a purpose for which loan funds can be used and which is consistent with loan approval conditions.

(ii) Sufficient funds are available to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(iii) The change will not adversely affect the soundness of the operation or the Government's security.

(3) *Recording changes.* All changes agreed on including extra work orders will be recorded on Form FHA 424–7.

§ 1823.30 State requirements, forms, guides, and other issuances.

The State Director will supplement this subpart with State issuances necessary to the successful operation of the program. The State Director with the assistance of the OGC may change or substitute documents or modify procedures as set out in this subpart only to the extent necessary to enable applicants to comply with the applicable provisions of State laws. Each State Director will include in his State issuances:

(a) Additional definitions, if needed.

(b) Instructions relative to processing applications.

(c) Requirements for reporting progress on application processing.

(d) District Supervisor responsibilities.

(e) Assembly of material for presentation to the OGC.

(f) Bond counsel.

(g) Requesting assistance of State staff.

(h) Security including preparation of instruments.

(i) Handling of mortgages and security instruments.

(j) Notes, bonds, resolutions, and ordinances including preparation.

(k) Reserves.

(l) Insurance and bonding.

(m) Coordination with local agencies.

(n) Selection of and relations with attorneys, engineers, and other technical and professional applicant representatives.

(o) Preparation of appraisal reports.

(p) Affect of State statutes, rules, and regulations on programs, including whether State statutes forbid deferment of interest on direct FHA loans.

(q) State forms, guides, checklists, and other issuances.

(r) Items to be included in dockets.

§ 1823.31 Management assistance.

Management assistance will be based on such key factors as observation of borrower operations and facility maintenance, and review of the periodic management and audit reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FHA.

(a) *Borrower management reports, audits, and accounting systems.* Requirements pertaining to borrower accounting systems and management reports are detailed in § 1823.45. Requirements pertaining to audit reports are contained in a booklet, "FHA Instructions to Independent Certified Public Accountants and Licensed Public Accountants." Copies of Appendix 2 (see § 1823.45) and the audit booklet will be given to each applicant at a time not later than delivery of the Letter of Conditions.

(1) *Management reports.* (i) County Supervisors will obtain from borrowers and forward to the State Director two copies of:

Form FHA 442–1, "Forecast of Cash Receipts and Disbursements (operating Budget)," for the new fiscal year no later than 20 days after the beginning of the borrower's new fiscal year.

Form FHA 442–2, "Statement of Income and Expense for Fiscal Year to Date," within 20 days after the end of each quarter.

Form FHA 442–3, "Balance Sheet," within 20 days after the end of each fiscal year.

(ii) The State Director will designate a member of the Community Programs staff to be responsible for the review of borrower management reports. Ordinarily, review findings and instructions regarding further assistance will be forwarded to FHA field personnel within 20 days of submission for delinquent and problem borrowers, and 40 days for other borrowers. Form FHA 430–4, "Five Year Progress Report," will be updated during each State Office review.

(iii) Copies of review findings, instructions for further assistance, and management reports pertaining to delinquent and problem borrowers will be forwarded to the National Office.

(iv) The State Director may:

(*a*) After the end of the borrower's third full fiscal year of operation, exempt it from submitting management reports other than annually, provided it is current on its loans; is meeting the conditions of its agreements with FHA; is

properly maintaining its facility; and has demonstrated its ability to successfully operate its facility and manage its affairs. Borrowers qualifying for this exemption will only be required to submit copies of Forms FHA 442–1, FHA 442–2, FHA 442–3, and for those borrowers required to submit an audit, a copy of the audit report.

(b) Reinstate the requirement for submission of periodic management reports for those borrowers who become delinquent or otherwise are not carrying out their agreements with FHA.

(c) Require more frequent submission of management reports.

(2) *Audit reports and accounting systems.* (i) The County Supervisor will obtain audit reports from those borrowers required by § 1823.46 to submit such reports, and send them to the State Director for forwarding to the National Office. All audit reports will receive National Office review. Review results and recommendations or instructions for further assistance and audit preparation will be provided the State Director.

(ii) Borrower accounting systems must be approved by the State Director before loan funds are advanced.

(iii) The State Director may:

(a) Waive FHA accounting and auditing requirements for a public entity borrower if State statutes or regulations require adequate accounting and auditing procedures and he has reasonable assurance that he will obtain the necessary financial information for borrower assistance from the accounting system and audit reports prepared in accordance with such State statutes or regulations.

(b) Require an audit report from any borrower in addition to those described in § 1823.46 when he determines that FHA or borrower's interests would be better protected if such an audit were made.

(b) *Application to borrowers indebted to FHA on receipt of this subpart*—(1) *Management reports.* The requirements of this subpart will apply.

(2) *Accounting systems.* The requirements of this subpart apply to all such borrowers who the State Director determines are not now maintaining adequate accounting systems.

(c) *District Supervisor reports.* The District Supervisor will complete and forward to the State Director Form FHA 442–4, "District Supervisor Report Association-Organization Borrowers," for all borrowers between the fourth and ninth month of operation in the first year, and prior to March 31 of each year for borrowers delinquent in making their annual payments by January 21. Borrowers transferred to collection-only are excluded.

(d) *Security inspections.* A representative of the borrower will ordinarily accompany the FHA County Supervisor during each inspection.

(1) *Initial inspection.* The County Supervisor will inspect each borrower's security property and facility at the end of the first year of operation. The results of this inspection will be reported to the State Director on Form FHA 424–12, "Inspection Report."

(2) *Subsequent inspections.* The County Supervisor will make subsequent inspections of borrower security property and facilities during each third year after the initial inspection. The results of this inspection will be reported to the State Director on Form FHA 424–12.

(3) *Special inspections.* The County Supervisor may request or the State Director may determine the need for a member of his State staff to make certain security inspections. In such cases the State Director will detail a member of his staff to make such inspections.

(4) *Followup inspections.* If any inspection discloses deficiencies or exceptions or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of followup inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(e) *Development grant recipients.* Grant recipients will be assisted to the extent necessary to assure that facilities are constructed in accordance with approved plans and specifications and funds are expended for approved purposes.

§ 1823.32 Loan and grant approval authority.

Current information regarding limitations on loan approval authorities of various officials of the FHA may be obtained from any County or State Office of the Farmers Home Administration or from its National Office at 14th and Independence Avenue SW., Washington, DC 20250.

§ 1823.33 Loan and grant servicing.

Loans and grants will be serviced in accordance with Subpart F of Part 1861 of this chapter.

§ 1823.34 Subsequent loans and grants.

Subsequent loans and grants will be processed in accordance with this subpart.

§ 1823.35 Handling preliminary inquiries for loan and grant assistance for water and sewer projects (Standard Form 101).

This section outlines procedures for handling preliminary inquiries from public bodies and other nonprofit associations for assistance to water and sewer projects under the programs administered by the Community Facilities Administration, Department of Housing and Urban Development (DHUD); (EDA), Department of Commerce; the Environmental Protection Agency; and (FHA), U.S. Department of Agriculture. The communities will indicate their interest in obtaining such assistance by completing and filing Standard Form 101, "Preliminary Application for Requesting Federal Assistance for Public Works and Facility-Type Projects." Standard Form 101 will be filed with field offices of the FHA or DHUD, except that if grant assistance for sewer treatment facilities for public bodies is involved, Standard Form 101 will be filed with the State Pollution Control Agency. This section is based upon directives from the Director of the Bureau of the Budget dated October 12, 1965 and December 16, 1965.

(a) *Definitions.*—(1) *Qualified area.* This term will be used to mean those areas announced by the EDA to qualify for consideration under Titles I and IV of the Public Works and Economic Development Act (by reason of unemployment conditions, low income, or previous designation under the Area Redevelopment Act).

(2) *Intercepting sewer.* That portion of a main trunkline extending from the last lateral raw sewage collection line entrance to the treatment plant.

(3) *Outfall sewer.* This term is used for the sewer line from the treatment plant to the point of final discharge.

(b) *Receiving and processing Standard Form 101.* A preliminary inquiry form, Standard Form 101, will be used by representatives of communities to indicate their desire to obtain Federal financial assistance for water and sewer projects. All initial inquiries for assistance for water and waste disposal systems will be made on Standard Form 101. This form may be filed with the field offices of the FHA or the DHUD. However, in the case of grants for sewage treatment facilities for public bodies, the form will be filed with the State Pollution Control Agency.

(1) *Action by County Office.* If representatives of the community contact the FHA, the County Supervisor will assist them in completing the preliminary inquiry form. He will also provide them with appropriate leaflets or any other information available which may be helpful. In addition, he will obtain at the time of the applicant's visit information about the applicant organization and its proposals which may be helpful in determining the Federal agency, to which the application should be referred for further action. The preliminary inquiry form will be filed at the County Office in triplicate. If the application is for a grant for sewage treatment facilities from a public body, the application form will be filed at the County Office in an original and four copies. The County Supervisor will retain a copy and send the original and the other copies of the inquiry immediately to the State Office with a memorandum setting out all the information that might assist the State Director in reaching a decision as to the Agency that should receive the inquiry.

(2) *Action by State Office.* (i) If the inquiry is from a community which need not be referred to another agency, the State Director will advise the County Supervisor to have the group make application for FHA assistance by completing Standard Form 101. The County Supervisor will, upon receipt of Standard Form 101, process the application in accordance with the preceding sections of this subpart. The following are inquiries that need not be referred to another agency:

(a) Inquiries for grants to a nonpublic body in an area having no place, town, or village of more than 5,500 population and not located in an EDA qualified area.

(b) Inquiries for loans and grants other than for sewage treatment, in an area which does not have a place, town, or village of 2,500 population or more and is not located in an EDA qualified area.

(ii) Inquiries for grants for waste treatment facilities (including intercepting and outfall sewers) from public bodies will be directed to the State Pollution Control Agency in an original and two copies. This State Agency has the responsibility for determining the priority that should be assigned to the inquiry. If the request includes financial assistance beyond that which could be provided by a grant through the State Pollution Control Agency, an extra set of Standard Form 101 must be duplicated in order to make the proper referrals to all agencies.

(iii) Inquiries for grants from other than public bodies for water or waste disposal systems will not be referred to DHUD or to the State Pollution Control Agency for Federal assistance because these agencies are not authorized to make grants to nonpublic bodies.

(iv) All other inquiries for loans and grants for sewer or water facilities (excluding sewage treatment grant requests and grants from nonpublic bodies) will be referred as follows:

(a) Inquiries will be referred to DHUD from those areas which contain a community with a population of 2,500 or more, but not over 5,500.

(b) Inquiries will be referred to DHUD if the communities now have less than 2,500 population but are likely to become residential, industrial, or commercial as shown by existing plans for future development of a community or area with a population of 2,500 or more.

(c) Inquiries from areas located in Standard Metropolitan Statistical Areas (SMSA) will be referred to DHUD, except that inquiries from that part of such areas that are selected and agreed by U.S. Department of Agriculture and DHUD as not likely to become associated with the principal metropolitan community will be handled as if the inquiry was from a community outside of SMSA areas.

(v) One copy of each inquiry for a project involving water or sewer facility loans and grants will be referred to the appropriate Area Office of the Economic Development Administration if it is located in one of the qualified areas under the Public Works and Economic Development Act of 1965 and provided the State Director, based on information entered in Block 3A of Standard Form 101, or for other reasons, believes that the applicant may be eligible for EDA assistance. The FHA will take no further action on the inquiry until it has heard from EDA.

(vi) Other agencies may also refer inquiries they have received to FHA. In such cases, the State Director should determine within 5 days of receipt of the inquiry the referral action that he proposes to take on the inquiry and notify the agency from which the Standard Form 101 was received.

(vii) Within 5 days from receipt of a preliminary inquiry from the county office, the State Director will determine the proper agency to which the form is to be forwarded and send that agency the original and one copy of the form together with any appropriate comments, except in the case of the State Pollution Control Agency, the original and two copies will be sent. Suggested guide letters listed below for making these referrals are available in all FHA offices.

Letter to Regional Director, DHUD
Letter to Area Office Director of EDA
Letter to State Pollution Control Agency

(a) The State Director will advise the County Supervisor as soon as the inquiry is referred to another agency by providing him with a copy of the referral memorandum.

(b) The remaining copy of the inquiry will be retained in a State Office suspense file in the State Office. A suitable followup system will be established to insure that the agency to which the inquiry is referred responds promptly.

(viii) If an inquiry is filed directly with the State Office, the State Director will make the necessary referral as outlined above. He will, at the same time, send one copy of the inquiry to the county office with appropriate comments on any future action needed.

(c) *General.* (1) Some of the inquiries referred to the Environmental Protection Agency, EDA, and DHUD will be returned to FHA for final processing because the proposal does not entirely meet the criteria of the agency to which it was referred. In such cases, the State Director will direct the County Supervisor to proceed with the processing in accordance with the preceding sections of this subpart.

(2) Lists of the address of the appropriate field offices of the agencies to which referrals are made must be maintained in each State Office.

(d) *Joint financing of projects.* Joint financing of a project by FHA and some other agency may sometimes be desirable where combined authorizations may need to be utilized to make it feasible. In such cases, the State Director will reach an agreement with the representatives of the other agency on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction accounts, inspections, and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, and nondiscrimination in making services or benefits available. However, provisions of the preceding sections of this subpart and Part 1803 of this chapter must also be followed in handling funds. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

§ 1823.36 Appendix 1 (referred to in FHA offices as Exhibit J), Planning and Developing Community Water and Waste Disposal Facilities.

This appendix (consisting of §§ 1823.36 through 1823.44) outlines the policies for planning and developing community water and waste disposal facilities.

(a) *Design policies.* Facilities financed by FHA will be designed and constructed in accordance with sound engineering practices; meet the requirements of State and local agencies having jurisdiction in such matters; have sufficient capacity to provide for reasonable growth, and fire protection; and be economically feasible.

(1) Minimum monthly payments by vacant lot owners ("dry taps") will not be included in estimates of project income, feasibility determination, or considered in computing average system investment per tap. There is no objection to an applicant's accepting subscriber agreements for such "dry taps" or connections to pay monthly minimum bills for certain periods, but they should be considered only as indications of future growth possibilities.

(2) If developers request a system be constructed to provide capacities to serve undeveloped areas, they will be required to pay for such additional capacities in cash before approval of the loan. Subdivision developers must provide the distribution system for users in the subdivision and dedicate (donate) the distribution system to the applicant.

(b) *Compliance with State Health Department standards.* Each FHA financed facility will comply with the requirements of the State Health Department (or other appropriate regulatory agency). The applicant is responsible for obtaining and presenting to FHA evidence of such compliance including approval of facility plans and specifications.

(c) *Compliance with environmental protection (pollution control) standards.* (1) No FHA loan or grant for construction or improvement of a water system will be approved unless a certificate is provided by the appropriate State Environmental Protection Agency (EPA) showing that the system will not result in the pollution of waters of the State in excess of standards established by that agency.

(2) No FHA loan or grant for construction or improvement of a central sewer and waste disposal system will be approved unless a certificate is provided by the appropriate State EPA showing that the effluent from the system will conform with appropriate State and Federal water pollution control standards.

(3) Applicants will provide FHA with evidence of compliance consisting of letters or certificates from the appropriate State agency.

(d) *Consistency with comprehensive area plans for the development of water and sewer systems.* Water and waste disposal facilities for which FHA grant funds are to be used must be necessary for orderly community development and consistent with a comprehensive area

sewer or water development plan for the rural area in which the project is located. Applicants will provide FHA with evidence of consistency with such plans. Such a plan must exist before an FHA grant may be made.

(e) *Consistency with other development plans.* No FHA grant for a water or waste disposal facility will be approved unless it is determined that the proposed project is not inconsistent with any planned development under State, county, or municipal plans approved as official plans (completed or under preparation) by competent authority for the area in which the rural community is located. Applicants will provide FHA with letters or certificates evidencing such lack of inconsistency.

(f) *Location of facilities in flood plain area.* Insofar as practical, facilities will not be located in flood plains. In the event it is necessary to consider locating facilities in a flood plain area, applicants will evaluate the proposal from the standpoint of special design and additional initial and maintenance costs. Normally, the Corps of Engineers or the Soil Conservation Service (SCS) of the U.S. Department of Agriculture will be in a position to provide information concerning the likelihood of flooding and the possibility of damage to the proposed facility. It will be the responsibility of the applicant to obtain information from the Corps of Engineers, the SCS, or other appropriate agencies concerning the possibility of flood damage to the proposed facility and provide FHA with a complete cost evaluation of such action.

(g) *Water systems*—(1) *Pressures.* Maximum pressure should not exceed 90 p.s.i., minimum should not be less than 20 p.s.i., calculated at maximum use flow.

(2) *Storage.* Design on basis providing for 2-day use requirements; use current American Water Works Association (AWWA) specifications; not less than 300 gallons per meter served, except that peak-only storage may be less, based on study of specific project.

(3) *Plastic pipe.* Meet current product and American Society for Testing and Materials (ASTM) standards and be acceptable to the National Sanitation Foundation. Operating pressures not to exceed 2/3 rated working pressure. Wall thickness shall not be less than 0.090 inches. Friction loss computations not to exceed a C-factor of 150.

(4) *System testing.* Leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours.

(h) *Sanitary sewerage systems*—(1) *Sewage treatment.* Treatment facilities shall be designed and installed so as to result in:

(i) Substantially complete removal of all floatable and settleable materials;

(ii) Removal of not less than 85 percent of 5-day biochemical oxygen demand;

(iii) Substantially complete reduction of pathogenic microorganisms;

(iv) Such additional treatment as may be necessary to meet applicable water quality standards.

(2) *Combined sanitary and storm sewerage systems.* Combined systems will not be approved except that improvements to existing combined systems may be financed by FHA provided it would be impractical to provide separate systems and the proposal is approved by the State EPA (Water Pollution Control).

(3) *Line capacities.* Lines shall be designed to provide for maximum hourly sanitary flow based on average daily per capita flow of not less than 40 gallons. Design lateral and submain lines with full running capacity of not less than 6 times the average daily flow. Design main outfall lines on basis of not less than 5 times average daily flow. Allow for additional waste from business establishments and infiltration of ground water.

(i) *Solid waste systems.* (1) A qualified engineer should assist with site selection, planning and design of the landfill, drainage control, roadways, and utilities. He should also consider any problems which may arise due to water leaching into or from sanitary landfills and should provide a design which will allow for proper handling of landfill gases.

(2) The SCS can assist in the evaluation of sanitary landfill sites and can advise on the suitability of the soils in the area involved. It can also provide advice on drainage problems, erosion control, land utilization, and site maintenance. The Health Department can assist with the selection of landfill sites and can provide guidance on potential air and water pollution problems. It can also provide advice on the design of the landfill and make suggestions concerning the control of insects, rodents, and other pests. An option should not be taken for a sanitary landfill site until the site has been approved by the State Health Department or other appropriate regulatory agency.

§ 1823.37 Technical services.

(a) *General.* The FHA may provide advice and consultation in connection with preliminary determinations regarding engineering feasibility, economic soundness, and cost estimates. Applicants will provide the services necessary to plan projects, including design of facilities, and preparation of cost and income estimates.

(b) *Selection of engineer.* The applicant will select its engineer. Any engineer who is registered in the State and has sufficient experience, capital, equipment, and staff to provide the required service is eligible. FHA personnel are prohibited from recommending any particular engineer. FHA may provide applicants, on their request, a list of engineers who have worked successfully on similar facilities in the area.

(c) *Engineering contracts.* Written contracts will be required for engineering services. Such contracts, including the amount of the fee to be paid, will be reviewed and, if satisfactory, will be approved by FHA after execution by the applicant and engineer. Form FHA 442–19, "Agreement for Engineering Services," will be used in connection with all water and sewer projects, except that FHA may approve other agreements entered into by the applicant and its engineer prior to filing an application or when special factual situations require, if the provisions of such agreements are consistent in all respects with those contained in Form FHA 442–19.

§ 1823.38 Preplanning conference.

Ordinarily, the preplanning conference will be attended by applicant representatives, its engineer and attorney, an FHA representative, and other involved parties and will be held prior to commencing facility planning. At this conference the development of the preliminary engineering report or final plans and specifications, whichever is appropriate, will be discussed in detail.

§ 1823.39 Preliminary engineering reports.

Use the following as a guide for preparation of preliminary engineering reports:

(a) *Area to be served.* (For all projects.) Describe—give natural boundaries, major obstacles, elevations, need for facility, and other pertinent information. Use maps, photographs, and sketches.

(b) *Existing facilities.* (For all projects.) Describe—include condition, adequacy, suitability for continued use of facilities now owned by the applicant.

(c) *Proposed facilities and services.* (For all projects.)

(1) General description of proposed facility, including design criteria adopted.

(2) Land, and other rights.

(i) Land.

(*a*) Amount required.

(*b*) Location—alternate locations.

(ii) Rights.

(*a*) Easements, permits, and other evidence of rights-of-way required—availability of alternates.

(*b*) State Health Department and other agency requirements.

(d) *Supply—collection systems*—(1) *Water supply.* (i) Requirements—quantities.

(ii) Requirements—quality.

(iii) Sources—include study on all feasible sources and provide comparison of such sources.

(iv) Treatment—requirements, if any, and proposals.

(v) Storage—requirements and proposals.

(vi) Pressure—requirements and proposals.

(vii) Distribution systems—requirements and proposals—give lengths and sizes—key features.

(viii) Hydraulic calculations in tabular form.

(2) *For sanitary sewerage systems.* (i) Collection systems.

(*a*) Requirements—quantities.

(*b*) Proposals.

(*c*) Describe—materials, problems.

(*d*) Hydraulic calculations in tabular form.

(*e*) Include cost comparisons where applicable.

(ii) Treatment facilities including interceptor and outfall sewers:
(*a*) Requirements—quantities.
(*b*) Proposals.
(*c*) Give key features.
(*d*) Problems foreseen.
(*e*) Calculations showing plant capacity and BOD and solids. Removal capabilities.
(iii) Show initial construction and annual operation and maintenance costs for the following types of treatment as a minimum:
(*a*) Waste stabilization lagoon.
(*b*) Aerated lagoon.
(*c*) Oxidation ditch.
(*d*) Mechanical plant.
(3) *For solid waste disposal systems.* (i) Requirements—quantities.
(ii) Equipment required and plans of equipment rotation, transportation, and maintenance.
(4) *For storm waste water disposal.* (i) Requirements—quantities.
(ii) Proposals.
(iii) Describe—materials, problems.
(iv) Hydraulic calculations in tabular form.
(v) Include cost comparisons where applicable.
(e) *Cost estimate.* (For all projects.)

Development.	Interest.
Land and rights.	Equipment.
Legal.	Contingencies.
Engineering.	Refinancing.

(1) For sanitary sewerage systems a separate cost estimate for each of the above items must be shown for both the collection system and treatment facility. The cost estimate for the treatment facility should consider only those items eligible for EPA (Public Law 660) grant assistance.
(2) For projects containing both water and waste disposal systems, provide a separate cost estimate for each system.
(f) *Annual operating budget.* (For all projects.)
(1) Income—Include rate schedule: Project income realistically. In the absence of other reliable information, base water use on 35 gallons per capita per day, or 140 gallons per family per day, or 4,200 gallons per meter per month. Where large livestock uses are projected, the report must include facts to substantiate such projections.
(2) Operation and maintenance costs: Project costs realistically. In the absence of other reliable data, base on actual costs of other existing systems of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates. Include the following:

Salaries—Wages.	Insurance.
Taxes.	Repairs and maintenance.
Accounting, auditing, legal.	Supplies.
Interest.	Office Expenses.
Utilities.	Other.
Gas—oil—fuel.	

(3) Capital improvements.
(4) Debt repayment.
(5) Reserve: Unless otherwise required by State statute, establish at one-tenth of annual debt repayment requirement.
(g) *Maps, drawings, sketches, and photographs.* (For all projects.)
(1) *Maps.* Show locations, boundaries, elevations, population distribution, existing and proposed systems, right-of-way, and land ownership.
(2) *Drawings, sketches.* Show preliminary design and layout, elevations.
(3) *Photographs.* As indicated.
(h) *Construction problems.* (For all projects.) Discuss in detail, including information on items such as subsurface rock, high water table, or others which may affect cost of construction.
(i) *Conclusions and recommendations.* (For all projects.)

§ 1823.40 Construction bids and contract awards.

(a) *Competitive bid contracts.* All development work, including the purchase of material and equipment, will be completed by contracts which have been advertised and awarded to the lowest acceptable bidder except as provided in paragraph (b) of this section. This does not preclude rejection of all bids and negotiation with the bidders when a satisfactory bid was not received as a result of advertisement when not prohibited under State law. In such cases, negotiations will always be conducted with the lowest responsible bidder and may be conducted with other bidders at the discretion of the borrower, their engineer, and FHA. Development work may be completed in accordance with either lump-sum or unit-price contracts. Such contracts should contain the following:

Item I—Notice and Instructions to Bidders.
Item II—Bidder's Proposal.
Item III—Notice of Award.
Item IV—Bid Schedule.
Item V—Construction Contract.
Item VI—Performance Payment Bond.
Item VII—Plans and Specifications.
Item VIII—Contract Change Orders (Form FHA 424–7).
Item IX—Compliance Statement (Form FHA 400–6).

Model forms of contract documents for items I through VI above, and items VIII and IX as FHA forms, are available at all FHA offices. Applicants may obtain additional copies of model forms from any County or State Office. All such contract documents and related items will be approved by FHA prior to the release of invitations to bid.
(1) *Details of plans.* Plans for lump-sum contracts should be complete in all details so as to define all features of the work. Plans for unit-price contracts should be reasonably accurate with respect to quantities of work, and should clearly define the scope of the work and all typical details for each item of work upon which unit-price payments will be used.
(2) *Section and details.* Construction sections and large scale details should be drawn wherever the plan allows any doubt as to what is indicated. For grading operations, existing and final contours and the limits of grading should be accurately shown. Payment lines should be prominently shown where pertinent to the type of contract and computation of pay quantities.
(3) *Existing conditions.* Existing conditions and work which will be performed by others should be clearly indicated in the plans and specifications. Existing conditions at the site of the work should be determined by appropriate exploration and investigation and the results, together with other general information, should be furnished to bidders in the plans and specifications. The extent of borings, test pits, or other subsurface explorations should be based upon the nature of the project, and the findings should be shown on the plans. General topography should indicate existing structures, underground, surface, or overhead utilities, and drainage facilities. The extent of these investigations should be adequate to the preparation of sound and complete engineering design. Pertinent data on rock soundings should be furnished the bidder.
(4) *Unit-price specifications.* Extreme care should be utilized in phrasing the payment items for unit-price contracts. They must be carefully correlated with typical details for pay items shown on the plans, and should clearly indicate the method of measurement to be employed.
(5) *Performance-type specifications.* When performance or results are specified, a complete description of the desired result should be given and standard methods of tests for compliance, whenever applicable, should be stated.
(6) *Liquidated damages.* Liquidated damages shall be established in an amount which as a minimum shall cover the daily interest cost on the loan, the cost of inspection, and other anticipated expenses. Consideration also should be given to loss of revenue during the delay. The amount should be sufficient to assure completion of the work by the required date in the construction documents and to avoid any financial injury to the borrower.
(7) *Time of completion.* The contract will provide for the time of completion in calendar days. The time of completion should be estimated so that contractors who ordinarily bid on the type of project proposed can complete it within the allotted time.
(8) *Bid bonds.* Bid bonds will be in the amount of 5 percent.
(9) *"Or equal."* Performance specifications and the term "or equal" may be used for equipment and certain materials. In specifying pipe, however, the acceptable material(s) should be designed into the project to assure proper installation of the materials chosen and to avoid uncertainty and misunderstanding. This can be done in the following ways:
(i) By reference to nationally-known materials standards such as ASTM and AWWA. The specifications should be complete, clear and concise with a statement setting forth the general scope of work and followed by an adequate description of the various classes of work segregated under the proper sections and headings. Specifications should be prepared in a manner so contractors may be assured that they completely describe the facility to be constructed and that they are fair and unbiased. General specifications attempting to include all types of

construction or materials are unsatisfactory.

(ii) By specifying two or more materials, any one of which is acceptable to the owner.

(iii) By specifying the particular material required for the project. In specifying materials the applicant and his consultant will consider all materials suitable for the project. Where materials which would normally be suitable are not included for bidding, the applicant and his consultant must be prepared to justify the selection of the material used.

(b) *Negotiated contracts.* If allowed by State statutes, individual items including labor and material costing not in excess of $50,000 may be completed by negotiated contracts with the written approval of FHA. Award of such contract will be subject to the determination by FHA that the prices agreed upon are reasonable and all available contractors or suppliers have been considered.

(c) *Performance and payment bonds.* Bonds assuring performance and payment of 100 percent of the contract cost including all contracts, whether negotiated or obtained through competitive bidding procedures, will ordinarily be required in connection with each contract.

(d) *Limitations on bidder.* No engineer or architect (individual or firm) who has prepared plans and specifications or who will be responsible for supervising the construction will be considered an acceptable bidder. Any firm or corporation in which such architect or engineer is an officer, employee, or holds or controls a substantial interest will not be considered an acceptable bidder. Bids will not be awarded to firms or corporations which are owned or controlled wholly or in part by a member of the governing body of the applicant. Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting, and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so.

(1) Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the jobsite in a finished or semifinished state, such as prefabricated buildings and lift stations. Contracts may also be awarded for materials delivered to the jobsite and installed by a patented process or method.

(2) Contract awards may not be made for proposals which combine the engineering and construction of "turnkey projects."

(3) FHA loan and grant funds may be provided to applicants using their own "in-house" engineering staffs.

(e) *Bids and bid openings.* Bids will be invited and opened and contractors selected in a manner and on a time schedule so as to permit development to proceed with the least delay and cost to the borrower. The instructions to bidders will normally contain a provision that the owner has a specified number of days (ordinarily 60) in which to award the contract.

(1) *Bids.* Whenever it is practical, provisions should be made in the invitation bid schedule for bids on portions of the work by specialized contractors. For example, an invitation might permit bids on any one or more of such division of a job as "well and pump," "elevated tank," and "distribution system."

(i) Invitations to bid will be sent to local and regional contractors who might be interested in bidding on projects of the size and scope concerned. Advertisements for bids should ordinarily be published at least 3 weeks prior to the bid opening date in a publication which has at least regionwide circulation or in a recognized construction trade journal having circulation in the appropriate region.

(ii) Bid delivery. Bids should be delivered at a designated place and not later than a designated date and time, but not on a legal holiday or the day following. Bids should be opened and read in the presence of bidders and a tabulation of all bids received should be furnished to each bidder. An itemized reading of the apparent low bid or bids will be made at the request of any bidder. Under no circumstances should a bidder be permitted to alter his bid after the time designated for receipt of bids.

(2) *Bid openings.* Bid openings will be attended by an FHA representative.

(f) *Contract awards.* Ordinarily, contracts will be awarded to the lowest responsible bidder. The FHA representative, the engineer for the applicant, and the applicant will examine and thoroughly analyze the bids. They will mutually agree upon any contract awards to be made before the applicant takes any official action toward awarding contracts.

(1) *Deductive alternates.* Deductive alternates may be specified in the bidding documents to the extent necessary to insure a bid within the funds announced as available to finance the contract. Deductive alternates will be set up only for methods of construction and quantities of work. "Deductive alternates will not be included for materials" such as type of pipe. The preferential order of the acceptance of deductive alternates necessary to bring the project within the available funds will be clearly shown in the bid schedule. The applicant will announce the amount of funds available for construction at the bid opening immediately prior to the opening of the first bid. The position of the bidders will be determined by the acceptance of the required number of deductive alternates necessary to bring the cost of the project within the amount of funds available. When accepting deductive alternates, the applicant must carefully evaluate the effect the acceptance of the alternate will have on the annual operating budget and on FHA loan approval conditions. The option to make an award on any basis specified above must be clearly stated in the bidding documents.

(g) *Contract approval.* The applicant's attorney will review the executed contract documents including performance and payment bonds and provide the County Supervisor with his certification that they have been properly executed and that the persons executing these documents have been properly authorized to do so. The contract documents, including bid bonds and bid tabulation sheets, will be forwarded to FHA for approval. All contracts will contain a provision that they are not in full force and effect until they have been approved by FHA in writing.

(h) *Equal opportunity in employment for construction.* All successful bidders for contracts in excess of $10,000 will be required to execute and comply with the requirements of Form FHA 400–6, "Compliance Statement."

(i) *Davis-Bacon and related Acts.* The provisions of the Davis-Bacon and related Acts do not apply to loans or grants made by FHA for water and waste disposal projects. The Act may apply to portions of such projects which are being financed in part by other Federal agencies. In such cases, it will be the responsibility of such other Federal agencies to assure compliance with the Act. The FHA County Supervisor can provide further information.

§ 1823.41 Preconstruction conference.

Prior to begining development, an FHA representative will review the planned development with the applicant, its engineer and attorney, the contractor, and other interested parties. The conference will thoroughly cover the items included in Form FHA 424–16, "Record of Preconstruction Conference," and the discussions and agreements will be documented on that form.

§ 1823.42 Resident inspection.

Full-time resident inspection is encouraged for all projects. This inspection may be provided by the consulting engineer or the applicant may engage a qualified inspector who will work under the general supervision of the engineer. Daily inspection report forms and partial payment estimate forms are available on request from the County Supervisor.

(a) *Inspectors daily diary.* The inspector will maintain a daily diary in accordance with the following:

(1) The diary shall be maintained in a hard-bound book.

(2) The diary book shall have all pages numbered and all entries written in ink.

(3) All entries shall be entered on a daily basis beginning with the date and weather conditions.

(4) Daily entries shall include daily work performed, number of men and equipment used in the performance of work, and all incidental happenings during that day.

(b) *Final inspection.* A final inspection will be made by representatives of the borrower's governing body, the engineer, the contractor, local, State, or Federal regulatory agencies, other agencies providing financial assistance, and FHA before final payment is made. Final payment will not be made until all parties concur in writing that the construction has been completed as planned.

§ 1823.43 Changes in development plans.

Changes in the development plan may be made at the request of the borrower

provided funds are available to cover the costs. The proposed changes must be recorded on Form FHA 424–7, "Contract Change Order." The change order must be signed by the borrower, the project engineer, the contractor, and FHA before becoming effective.

§ 1823.44 Additional information.

The FHA County Supervisor will provide additional information needed by the applicant or its representatives and will supply the needed forms.

§ 1823.45 Appendix 2 (referred to in FHA offices as Exhibit D), Requirements for Accounting and Financial Reporting by Community Programs Borrowers.

This appendix (consisting of §§ 1823.45 through 1823.52) sets forth guidelines pertaining to accounting systems, management reports, and audits for Farmers Home Administration (FHA) borrowers. Accounting systems which utilize the suggested charts of accounts and which are maintained in accordance with generally accepted accounting principles will supply the necessary accounting data for borrower operations.

§ 1823.46 Borrower responsibilities.

All borrowers are required to maintain adequate records and accounts and submit financial and statistical reports to FHA. Borrower agreements provide that FHA representatives may have access to and the right to inspect any or all books, records, and accounts pertaining to the facility of the borrower. Those elected and/or appointed officials (hereinafter referred to as governing bodies) of the borrower are by virtue of their position charged with:

(a) Accepting their responsibilities as defined in the articles of incorporation and the bylaws, the statutes under which they operate, and the terms of their agreements with FHA.

(b) Conducting borrower's affairs so that the terms of its agreement with FHA will be fulfilled.

(c) Maintaining accounting records adequate for successful operation.

(d) Preparation of reports necessary for successful management and operation and submitting copies of such reports to FHA as required.

(e) Planning for sufficient income and control costs to the extent necessary to assure that all financial obligations can be paid when due.

(f) Establishing and maintaining rules, regulations, rate schedules, fees, assessments, and policies necessary for orderly and economic operation.

(g) Providing proper control and management of operations, and informing membership, users, or patrons of organization goals, activities, and current financial situation.

§ 1823.47 Accounts and records.

Each borrower shall keep and safely preserve its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish full information as to any items included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(a) *Accounting systems.* Each FHA borrower is responsible for establishing and maintaining its accounting system, which must be operational and approved by FHA before any loan funds are received. Systems shall be maintained on an accrual basis.

(1) Borrowers with small operations may use Form FHA 430–5, "Bookkeeping System for Small Organizations."

(2) Accounting systems required by a State or regulatory agency for public entities may be acceptable to FHA.

(3) A recommended minimum chart of accounts is shown in § 1823.52.

(4) Accounting systems may be maintained by borrower personnel, a bookkeeping service, a computer service or through other arrangements satisfactory to the borrower and FHA.

(b) *Closing of books.* Each borrower shall close its accounting records at the end of its fiscal year unless State statutes or regulations prescribe otherwise.

(c) *Bank accounts.* (1) Borrowers shall maintain a bank account or bank accounts in a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

(2) The private bank account of the borrower shall be known as the Revenue Fund Account and all revenue shall be deposited therein and expended and used only in the manner prescribed by the bond ordinance, loan agreement, or loan resolution.

(3) The reserve cash account may be invested in an interest bearing savings account, certificates of deposit, treasury bills, a savings and loan association account, or may be used to make a prepayment on the FHA loan.

§ 1823.48 Management reports.

Effective decisions by governing bodies are critical to successful operation. In order to make effective decisions, the governing body must receive timely information by means of financial and other appropriate reports which will assist it in the fulfillment of its basic tasks, the formulation of plans to achieve goals, and the control of operations to accomplish planned results. The following minimum required reports will furnish the governing body with a means of evaluating prior decisions and serve as a basis for planning the future operations and financial conditions of the borrower.

(a) *Form FHA 442–1, "Forecast of Cash Receipts and Disbursements (Operating Budget)."* (1) The operating budget shall be prepared and adopted by the governing body prior to the beginning of each fiscal year. It should be based on realistic and informed estimates of expected receipts and disbursements for the coming fiscal year. Planning should generally be done on the basis of control of expenses as much as possible, and making sure that rates, fees, and so forth, are set to provide the necessary revenue. Throughout the year, other financial reports which compare the operating budget with actual receipts and disbursements will provide valuable information in the preparation of future budgets.

(2) Two copies of Form FHA 442–1 and copies of the minutes of the meeting at which it was approved will be submitted to the FHA County Supervisor no later than 20 days after the beginning of the borrower's new fiscal year.

(b) *Statement of income and expense.* Form FHA 442–2 will be used to detail the income and expenses during a given accounting period. Two copies of Form FHA 442–2 will be forwarded to the FHA County Supervisor at the end of each quarter unless FHA requires more frequent submissions.

(c) *Balance sheet.* Form FHA 442–3 is a Statement of Financial Conditions and discloses the assets, liabilities, reserves, and net worth of the borrower as of the end of an accounting period such as quarterly, semiannually, or annually. The Balance Sheet shall be prepared as often as needed by the governing body. Two copies of the Form FHA 442–3, prepared as of the end of the fiscal year, will be forwarded to the FHA County Supervisor no later than 20 days after the end of the fiscal year.

(d) *Report submission.* Those borrowers using a machine accounting system may submit print-out type reports provided these reports are in the format of the required FHA forms. Also, borrowers desiring to submit more detailed information than required by FHA forms may attach such detail to the related FHA form.

§ 1823.49 Additional reports.

Each borrower is required to provide the FHA County Supervisor within 20 days following the end of the fiscal year the following:

(a) A letter showing:

(1) The name, address, and term of office for each member of the governing body, and

(2) The number of residential users and the number of commercial users.

(b) Evidence that required property and liability insurance, workman's compensation, and fidelity bond premiums have been paid.

§ 1823.50 Audits.

FHA borrowers required to have an annual audit performed by an independent public accountant are those whose projected gross income for the first full year of operations (column 3 of Form FHA 442–1) exceeds $25,000, and others as required by the FHA State Director. Borrowers whose annual gross income is less than $25,000 may have an annual audit made by an independent public accountant.

(a) Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(b) Audits will be prepared in accordance with the requirements of the handbook, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees." Copies of this handbook may be obtained from the County Supervisor.

(c) Audit reports prepared for a borrower in accordance with the requirements of a State or other regulatory agency may be accepted by FHA in lieu of those required in paragraph (b) of this section.

(d) A copy of the audit report will be forwarded to the FHA County Supervisor by the borrower as soon as it is received.

§ 1823.51 Financial reports for organizations not required to submit an audit report.

Borrowers whose annual gross income for a full year of operation is less than $25,000 and not having an annual audit made by an independent public accountant, will within 60 days following the end of each fiscal year, furnish the FHA County Supervisor with an annual report, consisting of a verification of the organization's balance sheet and statement of income and expense by a committee of the membership not including any officer, director, or employee. Such committees will be appointed by the borrower's governing body and will certify to its examination of the accounts and records. The final Statement of Income and Expense, Form FHA 442–2, for the year and the Balance Sheet, Form FHA 442–3, will be used.

§ 1823.52 Minimum chart of accounts for water and waste disposal borrowers.

Public body and nonprofit water and waste disposal associations will use the system of accounts prescribed by the State or other regulatory authority. If none is prescribed, the water association or public body may use the Uniform System of Accounts for Class D Water Utilities published by the National Association of Regulatory Utility Commissioners, or the following minimum suggested chart of accounts for FHA borrowers. Associations or public bodies using this system of accounts will use only those accounts necessary to adequately furnish readily the information needed to prepare balance sheets and other financial reports.

(a) The numbers preceding each account are for reference purpose only and are not intended to represent a comprehensive method of coding.

Assets—fixed:
- 101 Utility Plant.
- 111 Allowance for Depreciation.
- 121 Land.
- 124 Other Investments.

Assets—current:
- 131 Cash—Revenue Fund Account.
- 132 Cash—Operation and Maintenance Fund.
- 133 Cash—Debt Service.
- 134 Cash—Reserve Fund.
- 135 Cash—Construction Funds.
- 136 Petty Cash and Change Fund.

Assets—Current—Continued
- 141 Notes Receivable.
- 142 Customer Accounts Receivable.
- 144 Allowance for Uncollectible Accounts.
- 150 Materials and Supplies.

Assets—deferred:
- 165 Prepayments.
- 183 Other.

Proprietary capital (net worth):
- 208 Members—Investment.
- 215 Retained Earnings.
- 219 Net Income or (Loss).

CURRENT YEAR

Liabilities—long-term:
- 221 Bonds or Notes Payable—FHA.
- 224 Other.

Liabilities—current:
- 231 Notes Payable—Current Portion.
- 232 Accounts Payable.
- 235 Customer Deposits.
- 236 Taxes Payable.
- 237 Interest Payable.
- 238 Other.

MINIMUM CHART OF ACCOUNTS FOR WATER AND WASTE DISPOSAL BORROWERS

Income Accounts:
- 400 Operating Revenues.
- 415 Revenues from Jobbing and Contract Work.
- 418 Nonoperating Rental Income.
- 419 Interest and Dividend Income.
- 421 Miscellaneous Income.
- 460 Unmetered Sales to General Customers
- 461 Metered Sales to General Customers.
- 462 Private Fire Protection Service.
- 463 Public Fire Protection Service.
- 464 Other Sales to Public Authorities.
- 465 Sales to Irrigation Customers.
- 466 Sales for Resale.

Operation and maintenance accounts plant operation:
- 600 Salaries and Wages.
- 610 Purchased Water.
- 620 Fuel or Power Purchased for Pumping.
- 630 Chemicals.
- 640 Supplies and Expenses.
- 650 Repairs of Water Plant.
- 660 Transportation Expenses.

General expenses:
- 680 Administrative and General Salaries.
- 681 Office Supplies and Other Expenses.
- 682 Outside Services Employed.
- 683 Interest.
- 684 Insurance Expense.
- 686 Employees Pensions and Benefits.
- 688 Regulatory Commission Expenses.
- 689 Miscellaneous General Expenses.
- 690 Uncollectible Accounts.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

§ 1823.53 Appendix 3 (referred to in FHA offices as Exhibit C), Information Pertaining To Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants.

This appendix (consisting of §§ 1823.53 through 1823.61) outlines the policies of the Farmers Home Administration (FHA) with respect to preparation and issuance of evidences of debt (hereinafter in this appendix sometimes referred to as "bonds" or "debt instruments") by applicants whose obligations bear interest that is not subject to Federal income tax.

(a) To be eligible for an FHA loan, each applicant must establish that it is unable to obtain other credit to meet its needs at reasonable rates and terms.

(b) Each applicant will be required to make a public offering of its bonds for sale as soon as it has been determined that the facility can be completed within the estimate.

(c) FHA will work closely with the applicant through the various stages of application processing and bond offering. However, preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has had experience in municipal financing and has previously issued opinions that have been accepted by municipal investors such as investment dealers, banks, and insurance companies.

(d) All bonds will be prepared in accordance with this exhibit and will conform as nearly as possible to accepted methods of preparation of similar bonds in the area. Ordinarily the bonds should not be offered for sale until the exact amount of funds needed is determined by inviting construction bids. Notices of bond sales will be prepared to attract investors. If they make acceptable bids, the bonds will be sold to them. FHA will purchase the bonds only if acceptable bids are not received.

(e) Many matters necessary to comply with FHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions in addition to any requirements of bond counsel will be issued by the Office of the General Counsel (OGC).

§ 1823.54 Bond transcript documents.

Any questions with respect to FHA requirements should be discussed with local FHA representatives. Bond counsel is required to furnish at least two complete sets of the following to the applicant, which will furnish one complete set to FHA:

(a) Copies of all organizational documents.

(b) Copies of general incumbency certificate.

(c) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to the calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(e) Certified copies of the resolutions or ordinances or other documents acted upon at such meetings, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(f) Copies of official Notice of Sale and affidavit of publication of Notice of Sale.

(g) Specimen bond, with any attached coupons.

(h) Attorney's no-litigation certificate.

(i) Certified copies of resolutions or other documents pertaining to the bond award.

(j) Any additional or supporting documents required by bond counsel.

(k) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel including opinion regarding interest on bonds being exempt from Federal and any State income taxes.

§ 1823.55 Interim financing from commercial sources during construction period.

In all cases where it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FHA funds. Where legally permissible, the applicant will advertise for the sale of permanent bonds prior to obtaining interim financing so that it may be determined definitely whether FHA will be the purchaser of the bonds. Of course, if FHA is not the purchaser, FHA will not require interim financing.

§ 1823.56 Permanent instruments for FHA loans to repay interim commercial financing.

Such loans will be evidenced by one of the types of instruments in the order of preference shown in § 1823.57.

§ 1823.57 Multiple advances of FHA funds using permanent instruments.

Where interim financing from commercial sources is not available, FHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed amount needed during 30-day periods. FHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(a) *First preference—Form FHA 440–22.* If legally permissible, use Form FHA 440–22, "Promissory Note (Association or Organization)." For insured loans, notes will be issued in amounts not to exceed $500,000 or the amount estimated necessary for an 8-month construction period, whichever is smaller, For example, when it appears that construction will require from 8 to 16 months, two notes will be used. If it appears that construction will require more than 16 months, three notes will be used. The first note will be for the amount estimated to be needed during the first 8 months. The second note will be for the balance of the loan if it is estimated that construction will be completed in 16 months, or for the amount estimated to be needed during the second 8 months if it appears that construction will require more than 16 months. In these cases, the third note will be for the balance of the loan. In any event no note may exceed $500,000. This may require more than three notes.

(b) *Second preference—single instrument with amortized installments.* If Form FHA 440–22 is not legally permissible, use a single instrument showing on the face the full amount of the loan and providing for amortized installments with provision for entering the date and amount of each advance of the reverse of or on an attachment to the instrument. Form FHA 440–22 should be followed to the extent possible.

(1) In case the construction period exceeds 8 months, the requirements for more than one instrument but not exceeding a principal amount of $500,000 as detailed in "First Preference" apply.

(2) Where interest-only payments are scheduled for the first installment due dates, no attempt should be made to compute in dollar terms the amount of interest due on such dates. Rather the instrument should provide that "interest only" is due on these dates. Thereafter, regular annual amortized installments of a specified dollar amount will be due on each installment date.

(c) *Third preference—single instrument with installments of principal plus interest.* If a single amortized installment instrument is not legally permissible, use a single instrument providing for specified installments of principal plus accrued interest. The annual principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal annual installments of combined interest and principal as required by the first two preferences.

(1) The repayment terms described in the last paragraph of the "Second Preference" apply. In case the construction period exceeds 8 months, the requirements for more than one instrument but not exceeding a principal amount of $500,000 as detailed in "First Preference" apply.

(2) Instruments shall contain in substance the following provisions:

(i) A statement of principal maturities and due dates.

(ii) Annual payments made on indebtedness evidenced by this instrument, regardless of when made, shall be applied first to interest computed to the annual installment due date and next to principal. Other payments, regardless of the source of funds from which such payments may be made, shall, after payment of interest to the installment due date if the annual payment is insufficient to pay all such interest, be applied to the principal last to become due under the instrument and shall not affect the obligation of the borrower to pay the remaining installments as scheduled. Such payments shall be applied only on the installment due dates.

(d) *Fourth preference.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of § 1823.59. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph.

§ 1823.58 Multiple advances of FHA funds using temporary debt instrument.

When none of the instruments described in § 1823.57 are legally permissible for multiple advances, each advance will be evidenced by an instrument approved by the State Director, Regional Attorney, and Bond Counsel and, if feasible, issued as an FHA State form.

(a) The approved form or instrument will show at least the following:

(1) The date from which each advance will bear interest.

(2) The interest rate.

(3) A payment schedule providing for interest on outstanding principal to be paid on January 1 of each year (or other payment date(s) if required by State law).

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

§ 1823.59 Minimum bond specifications.

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

(a) *Type and denomination.* Bond resolutions or ordinances will provide that the instrument(s) will be, at the option of the successful bidder, either Serial bonds in denominations not to exceed $10,000 (ordinarily in multiples of $1,000), or bonds not to exceed $500,000 each. Single bonds may provide for either repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FHA. Coupon bonds will not be used unless required by statute.

(b) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all times while the bonds are held or insured by the United States. The address of FHA for registration purposes will be that of the local FHA County Office to which the borrower is to forward its payments.

(c) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling.

(d) *Date of bonds.* Bonds acquired by FHA will be dated as of the day of delivery and payment.

(e) *Payment date.* Payments on bonds purchased by FHA will be scheduled for January 1 unless an annual date other than January 1 is certified by bond counsel as being legally necessary for specified reasons. Principal payments will be scheduled annually beginning with the first annual installment date after loan closing or the first annual installment date after any approved deferment period. Interest payments will be scheduled annually beginning with the first

annual installment date after loan closing. Semiannual interest payments, if required, will be scheduled for January 1 and July 1, unless other dates are certified by bond counsel as being legally necessary for specified reasons.

(f) *Maturity schedule.* The annual principal retirement should be the one best adapted to making bond retirement and interest payments which (with the addition of any other scheduled debt payments of the borrower) closely approximate equal annual installments of combined interest and principal over the term for which the FHA loan is approved.

(g) *Place of payment.* Payments on bonds purchased by FHA should be made by the borrower at the local FHA County Office without the assistance of a paying agent.

(h) *Redemptions.* Bonds should contain customary redemption provisions; subject, however, to unlimited right of redemption without premium of any bonds held by FHA except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in § 1823.57.

(i) *Additional bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, however, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued without restriction.

(j) *Prohibitions.* The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FHA, may post the date and amount of each advance or repayment on the instrument.

§ 1823.60 Notices of sale.

(a) *Bond advertisement.* For loans in excess of $50,000, bonds will be advertised for sale in a manner and to the extent required to give adequate public notice. The Notice of Sale shall include a provision stating in substance that if the applicant does not receive a bid resulting in a net interest cost of the applicable FHA interest rate or less, FHA will purchase the obligations.

§ 1823.61 Bids.

(a) *No block bidding by FHA.* If the applicant desires, block bidding may be invited, but FHA's commitment to buy will apply only to the entire issue.

(b) *Bidding by FHA.* FHA will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably, FHA will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where FHA is required to bid, the bid will be made at the applicable FHA interest rate.

(c) *Bid deposits.* Customary provisions for bid deposits will be included; which, however, will not be applicable to any FHA bid.

(d) *Bid rejection.* The applicant will reserve the right to reject any and all bids.

Dated: May 26, 1972.

JAMES V. SMITH,
Administrator,
Farmers Home Administration.

[FR Doc.72-9154 Filed 6-16-72;8:46 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 72-EA-47; Amdt. 39-1464]

PART 39—AIRWORTHINESS DIRECTIVE

Grumman Aircraft

The Federal Aviation Administration is amending § 39.13 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Gruman G-21A type airplanes.

There have been reports of cracks in the elevator and rudder torque tubes upon failure of which, an in flight loss of control can occur. Since this is a deficiency which can exist or develop in aircraft of similar type design, an airworthiness directive is being issued which will require inspection and when necessary, replacement of the subject torque tubes.

The foregoing indicates the necessity of expeditious adoption of the amendment and therefore notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

GRUMMAN. Applies to Models G-21 and G-21A Type Airplanes (Army OA-9; Navy JRF-1 through JRF-6B under T.C. 654) certificated in all categories.

Compliance required as indicated.

(a) To prevent hazards in flight associated with the failure of the elevator or rudder torque tubes, inspect the external surfaces of the following parts, located below the cockpit floor, within one (1) month in service after the effective date of this AD, unless already accomplished within the last eleven (11) months in service, and at intervals thereafter not to exceed twelve (12) months from the last inspection. Remove all bolted bellcranks, arms, and pedals from these parts to provide accessibility for such inspections around bolt holes and the external surface of the tube covered by these items.

(b) Using visual and dye penetrant methods, or an FAA approved equivalent inspection, inspect the elevator toque tube, P/N 12755-1, the rudder torque tube P/N 12756-1, and the L.H. and R.H. rudder pedal torque tubes P/N 12757-1 and P/N 12758-1, for corrosion and cracks. Replace corroded or cracked parts before further flight with parts of the same part number inspected in accordance with this AD, or with equivalent parts approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(c) Visually inspect tube P/N's 12725-1 and 12725-2 for corrosion. Repair in accordance with Federal Aviation Regulation Part 43 and Advisory Circular 43.13-1 before further flight or replace with parts of the same part number inspected in accordance with this AD, or with equivalent parts approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(d) The aircraft may be flown in accordance with FAR 21.197 to a base where a repair or replacement can be performed.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the repetitive inspection interval specified in this AD.

This amendment is effective June 27, 1972.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on June 9, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-9142 Filed 6-16-72;8:46 am]

PART 39—AIRWORTHINESS DIRECTIVES

[Docket No. 72-CE-15-AD, Amdt. 39-1442]

Cessna T310, 320, 401, 402, 411, 414 and 421 Series Airplanes; Correction

In F.R. Doc. 72-7064, appearing on pages 9385, 9386 in the issue of Wednesday, May 10, 1972, the subject AD should be corrected in the following respect:

Correct Part 1 of the applicability statement so that it now reads as follows:

CESSNA. (1) Paragraphs A, B, C and D are applicable to Models T310P, T310Q, 320D, 320E, 320F, 401, 401A, 401B, 402, 402A, 402B, 411, 411A, 414, 421, 421A, and 421B airplanes, except for those airplanes identified in Paragraph (2) of this applicability statement.

Issued in Kansas City, Mo., on June 9, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.72-9138 Filed 6-16-72;8:45 am]

[Airspace Docket No. 72-SO-46]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation and Revocation of Federal Airway Segments

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to revoke VOR Federal Airway Nos. 224 and 491, and designate replacement segments by extending VOR Federal Airway Nos. 18 and 97.

V-224 and V-491 were originally designated to provide routes for the movement of en route traffic overflying the Atlanta, Ga., terminal area, during periods when light traffic conditions prevail.

However, to simplify flight planning and to provide route continuity for those aircraft that overfly Atlanta, action is being taken herein to revoke V-224 and V-491 airways, and provide direct replacements by designating segments of V-18 and V-97 airways.

These amendments merely change the numbered identifiers of existing airways without affecting their alignment or width. Therefore, no substantive change in the regulation is effected, and notice and public procedure are unnecessary. However, in order to provide sufficient time for these changes to be depicted on appropriate aeronautical charts, these amendments will become effective on August 17, 1972.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., August 17, 1972, as hereinafter set forth.

1. Section 71.123 (37 F.R. 2009) is amended as follows:

a. V-224 is revoked.

b. V-491 is revoked.

c. In V-18 all between "Talladega, Ala.;" and "Augusta, including a north alternate" is deleted and "INT Talladega 083° and Rex., Ga., 270° radials; Rex.; INT Rex. 090° and Augusta, Ga., 278° radials;" is substituted therefor.

d. In V-97 all between "Albany, Ga.;" and "Knoxville;" is deleted and "INT Albany 352° and Atlanta, Ga., 180° radials; Atlanta; INT Atlanta 003° and Knoxville, Tenn., 197° radials;" is substituted therefor.

(Sec. 307(a), of Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), of Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 9, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-9137 Filed 6-16-72;8:45 am]

[Airspace Docket No. 72-CE-2]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Areas

On page 6210 of the FEDERAL REGISTER dated March 25, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of the Federal Aviation Regulations so as to alter the transition areas at Oswego and Coffeyville, Kans.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., August 17, 1972.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on June 2, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

OSWEGO, KANS.

That airspace extending upward from 1,200 feet above the surface beginning at latitude 37°00'00" N., longitude 94°57'30" W., thence NE to a point 22 miles west of the 358° radial of the Neosho, Mo. VORTAC and 5 miles south of the 085° radial of the Oswego, Kans. VORTAC, thence west along a line 5 miles south of the 085° radial of the Oswego, Kans. VORTAC to a point 7 miles east of the 206° radial of the Oswego, Kans. VORTAC, thence northeast along a line 7 miles east of and parallel to the 206°/027° radials of the Oswego, Kans. VORTAC to a point 20 miles northeast of the Oswego VORTAC, thence northwest to a point 10 miles NW of the 027° radial of the Oswego VORTAC, thence southwest parallel to the 027° radial of the Oswego VORTAC to a point 7 miles northeast of the 306° radial of the Oswego VORTAC, thence northwest parallel to the 306° radial of the Oswego VORTAC to a point 5 miles east of the 186° radial of the Chanute, Kans. VORTAC, thence S parallel to the 186° radial of the Chanute, Kans. VORTAC to the 37° parallel (latitude 37°00'00" N.), thence to the point of beginning, excluding the Parsons, Kans. transition area.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

COFFEYVILLE, KANS.

That airspace extending upward from 700' above the surface within a Seven-mile radius of the Coffeyville, Kans., Municipal Airport (latitude 37°05'45" N., longitude 95°34'25" W.); and within 3 miles either side of the 163° bearing from the airport extending from 7 miles to 8 miles south of the airport.

[FR Doc.72-9136 Filed 6-16-72;8:45 am]

[Docket No. 10270, Amdt. No. 103-12]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

Medicinal and Toilet Articles

The purpose of this amendment to Part 103 of the Federal Aviation Regulations is to add medicinal and toilet articles in small quantities carried in passenger baggage to those materials expressly excluded from the applicability of Part 103.

Section 103.1(b) defines dangerous articles and includes, among other things, compressed gases, corrosive liquids, and flammable liquids and solids. Each of these materials may be found in one or more forms in many toilet articles and medicines. As dangerous articles, they are subject to the special labeling, packing, and marking requirements of 49 CFR 172 through 178 applicable to transportation by rail express. Since the FAA believes that it is not appropriate to so regulate the carriage of these articles when carried in small quantities in an article of crewmember or passenger baggage, such articles when carried in limited quantities are specifically excluded by this amendment from the applicability of Part 103.

This amendment is based on a notice of proposed rule making (Notice 72-4) published in the FEDERAL REGISTER on February 3, 1972 (37 F.R. 2587). That notice was prompted by a letter of April 2, 1970, from the Air Transport Association of America petitioning the FAA to amend § 103.1(c) of the Federal Aviation Regulations to expressly exclude from the applicability of Part 103 medicinal and toilet articles in small quantities carried in passenger baggage.

Comments in response to the notice generally concurred with the proposal as written. Some comments objected to the 10-ounce size limitation because of its effect upon the carriage of certain toilet articles manufactured and sold in aerosol cans. The objections were founded on the fact that such articles are currently merchandised in cans that exceed 10 ounces in amount. We agree that the 10-ounce limitation proposed in Notice 72-4 is somewhat arbitrary; however, we believe that some reasonable limitation as to container size should be made. Accordingly, the FAA has decided that a maximum size limitation for each container of 16 ounces will not unduly restrict the general public in its right to carry such articles nor will a 6-ounce increase in the size of the aerosol container have an adverse effect upon safety in flight. On balance, however, the FAA believes that a restriction on the total quantity of these otherwise prohibited articles that can be carried by any passenger or crewmember must be made in order to offset the increase in the size of the container that is permitted. Therefore, since the regulation permits containers 16 ounces in size, the total quantity that can be carried by any passenger or crewmember is limited to 32 ounces. In this way, by limiting the amount of such articles and the size of their containers, an acceptable level of safety can be maintained without unduly restricting the freedom of the general public to carry such articles.

In consideration of the foregoing, § 103.1 of the Federal Aviation Regulations is amended, effective July 17, 1972, by changing the period at the end of § 103.1(c)(4) to a semicolon, and by adding a new subparagraph, designated (5), to read as follows:

§ 103.1 Applicability.

* * * * *

(c) * * *

(5) Medicinal or toilet articles in quantities of 16 ounces or less per container, when carried in crewmember or passenger baggage (including carry-on baggage) and the total quantity of those articles carried by any passenger or crewmember does not exceed 32 ounces.

(Secs. 313(a), 601, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 12, 1972.

K. M. SMITH,
Acting Administrator.

[FR Doc.72-9139 Filed 6-16-72;8:45 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-440; Order 451 A]

PART 35—FILING OF RATE SCHEDULES

PART 154—RATE SCHEDULES AND TARIFFS

Price Stabilization Criteria and Exhibit

JUNE 9, 1972.

On March 29, 1972, this Commission issued its Order No. 451 (37 F.R. 6852), establishing price stabilization criteria and requiring filing of a price stabilization exhibit. That order briefly recited the history of Commission actions pursuant to the Economic Stabilization Act of 1970, as amended, and Executive Orders Nos. 11615 and 11627 and the regulations thereunder. The order further points to the fact that on March 17, 1972, the Cost of Living Council amended Part 101—Coverage, Exemptions and Classification of Economic Units, to Chapter I—Cost of Living Council, in Title 6—Economic Stabilization of the Code of Federal Regulations; and the Price Commission amended Part 300—Price Stabilization, to Chapter III—Price Commission in Title 6 of the Code of Federal Regulations, all set out in 37 F.R. 5700, March 18, 1972. Among other things these amendments added a new § 300.16a, and called upon individual regulatory agencies to promulgate their own rules for implementing the Economic Stabilization Act in accordance with the criteria set forth in that section.

The Commission therefore amended its regulations under both the Federal Power Act and the Natural Gas Act to require that all applications for rate increases shall be accompanied by a special Price Stabilization Exhibit. This exhibit was to contain all the necessary information by the applicant to demonstrate that the filing complies with the intent and purposes of the Economic Stabilization Act of 1970, as amended, Executive Orders Nos. 11615, 11627, 11640, and with criteria set out in amendments to the Commission's regulations. The exhibit, related testimony filed, and any rebuttal will be part of the case and will be considered by the Commission in its overall determination as to whether the rate increase should or should not be granted.

On May 10, 1972, Chairman Grayson of the Price Commission sent a letter to Chairman Nassikas of this Commission pointing out that the Cost of Living Council has amended its regulations to, among other things, exempt firms employing fewer than 60 employees from wage and price limitations. Chairman Grayson requested that this Commission delay the effectiveness of its Order No. 451 pending study by its staff and that of the Price Commission of the impact, if any, of the Cost of Living Council's amended regulations on that order. This Commission is of the view that the change in regulations by the Cost of Living Council is inapplicable because it will not materially affect this Commission's exercise of its regulatory responsibilities.

With regard to paragraph (A)(b)(4) concerning labor costs, Chairman Grayson pointed out that the "Price Commission policies referred to therein are that, in general, wage or salary increases in excess of 5.5 percent per annum are not allowable unless the increase is required by a contract which become binding before November 8, 1972, or unless not to allow the excess cost would work an undue hardship on the employer." We are amending our regulations accordingly.

Chairman Grayson also made some observations about Order No. 451, particularly with respect to productivity gains. Specifically on Page 3 of his letter he stated:

> 1. An "expected" productivity gain is one which a utility is expected to realize over the time periods which a price increase will include. It should be fully taken into account in computing the costs upon which the price increase is based. If, however, a regulatory agency follows a "test year" or similar approach, in which neither productivity gains nor productivity losses are taken into account because the period for cost-accounting purposes is a past, "test," year, in which actual experience is used in place of estimates; and if, in the opinion of the regulatory agency, this approach is reasonably designed to achieve the goals of the Economic Stabilization Act, the inclusion or exclusion of expected productivity gains for price increase purposes may follow the procedure which the agency consistently uses for other cost aspects outside of the "test" year.
>
> 2. An "obtainable" productivity gain is one which a utility could obtain if it took reasonable steps to obtain it, consistent with the constitutional and statutory restraints, if any, which might prevent it from taking such steps. A regulatory agency which grants a price increase should accompany the grant of the increase with a finding that, in doing so, it has not allowed the increase to be supported by any costs which the utility evidently could have avoided, or could avoid, by productivity gains that were reasonably obtainable to it, subject to the constitutional and statutory restraints, if any, as aforesaid.
>
> 3. In order that utilities might have a financial incentive for discovering new measures to obtain productivity gains and for implementing whatever measures to that end they might have available already, a regulatory agency should, insofar as feasible, allow a utility which has obtained such gains in excess of expectations to retain at least a portion of them in the form of higher profits, for a short time, such as 2 or 3 years. The workability of this procedure is, of course, crucially dependent upon the discretion and expertise of the regulatory agency concerned, and is to be utilized, subject to the agency's judgment. The Price Commission believes that the regulatory policies along these lines would serve the purposes of the Economic Stabilization Program by encouraging efficiency.

This Commission in Order No. 437 (36 F.R. 16902) stated its intention to comply with the policies of the Price Commission. Since this Commission follows a "test year" approach or an approach which adjusts costs and sales consistently and, therefore, reflects productivity gains and losses; and since this approach is, in the opinion of this Commission reasonably designed to achieve the goals of the Economic Stabilization Act, this Commission is in full compliance with the policies of the Price Commission and separation and specific measurement of expected productivity gains for price-increase purposes is neither appropriate not necessary. With regard to "obtainable" productivity gains, this issue is already subject to Commission examination in rate cases under the test of reasonable costs. Prudence in the optimum utilization of facilities and service is considered in all proceedings, and departure therefrom requires findings as in any other contested issue. Thus, the objective of the Price Commission to offset cost increases to the maximum extent possible with productivity gains is consistent with FPC practice. We recognize that the Price Commission is also concerned with improving the productivity of American industry and labor by developing new techniques where possible. We deem it appropriate that such issues be raised in rate cases, if staff or any party has grounds to do so. We also note that the Price Commission recognizes that utilities should be allowed a financial incentive for implementing new measures to increase productivity, and we deem it appropriate that such issues be raised in rate cases. In this manner we comply with the Natural Gas Act, the Federal Power Act, the Economic Stabilization Act, and the Administrative Procedure Act. Accordingly, we delete the requirement of filing Statements P(b)(5) and Q(b)(5), as hereinafter indicated.

Chairman Grayson also pointed out that § 300.16d(3)(5)(c) was designed to supplement the interim criteria which immediately preceded it in the Price Commission's regulations where special circumstances made deviation from those criteria appropriate. Chairman Grayson then pointed out that "since the interim period for which these criteria were intended has now almost elapsed,

and since it will certainly have elapsed when the Federal Power Commission makes its Stabilization Program regulations effective, the section mentioned is no longer needed. The Federal Power Commission might therefore consider dropping the section if, in its descretion, it no longer deems the section useful." Order No. 451 refers to this section of the Price Commission regulations in two places, in paragraph (A)(c) of the order and sections (B)(c) of the order. Accordingly, we are deleting that section.

It is appropriate and in the public interest to modify the regulations set out in Order No. 451, primarily to elaborate on what constitutes labor costs under Price Commission policy, and to clarify the use of productivity gains as a criterion for allowing an increase in price. This order supersedes Order No. 451.

The Commission finds:

(1) It is appropriate and in the public interest to establish criteria for consideration of whether jurisdictional rate increases are consistent with the Economic Stabilization Act of 1970, as amended, and Executive Orders Nos. 11615, 11627, and 11640.

(2) The requirements of 5 U.S.C. section 553 (b) and (c) for notice and hearing do not apply to this order.

(3) In addition, the provisions of 5 U.S.C. section 553 do not apply because notice and public procedure are impracticable and contrary to the public interest in light of the regulations promulgated by the Price Commission at 6 CFR 300.16a pursuant to the Economic Stabilization Act of 1970 as amended.

Pursuant to sections 202, 205, 206, 301, 304, 307, and 309 of the Federal Power Act (49 Stat. 848, 851, 852, 854, 855, 856, 858; 16 U.S.C. 824a, 824d, 824e, 825, 825c, 825f, 825h) and sections 4, 5, 7, 8, 10, 14, and 16 of the Natural Gas Act (52 Stat. 822, 76 Stat. 72; 52 Stat. 823, 824, 825, 826, 828, 830, 56 Stat. 83; 61 Stat. 459; 15 U.S.C. 717c, 717d, 717f, 717g, 717i, 717m, 717o), the Commission orders:

§ 154.63 [Amended]

A. Section 154.63(f) Part 154—Rate Schedules and Tariffs, of Subchapter E—Chapter I, of Title 18 of the Code of Federal Regulations is amended by adding Statement Q as follows:

Statement Q—Price stabilization exhibit.

(a) All applications for rate increases shall be accompanied by a special Price Stabilization Exhibit. This exhibit shall contain by cross reference or otherwise all of the necessary information by the applicant to demonstrate that the applicant's filing is in compliance with the intent and purposes of the Economic Stabilization Act of 1970, as amended, Executive Orders Nos. 11615, 11627, 11640, and with the criteria as hereinafter set out in (b), except as provided in (c), (d), (e), and (f).

(b) These criteria are as follows:

(1) The increase is cost justified and does not reflect future inflationary expectations.

(2) The increase is the minimum required to assure continued, adequate, and safe service or to provide for necessary expansion to meet future requirements.

(3) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the applicant.

(4) The increase does not reflect labor cost increases in excess of 5.5 percent per annum, unless the increase is required by a contract which becomes binding before November 8, 1972, or unless not allowing the excess cost would work an undue hardship on the employer.

(c) Whenever an applicant is of the opinion that a requested increase is in conformity with the Economic Stabilization Program even though any or all of the criteria in (b) are not met, the exhibit shall:

(1) Set forth the criteria in (b) to the extent possible;

(2) Contain a statement by the applicant justifying its position that the requested increase is in conformity with the goals of the Economic Stabilization Program.

(d) Justification for price increases in conformity with the above criteria shall not be required for price increases resulting from the pass-through of special allowable costs including taxes (except income tax), purchased gas costs, and fuel cost. However, the criteria shall apply to labor cost unless otherwise specified by this Commission.

(e) The requirements for this exhibit shall not apply to any applicant's price increase where the rate base-cost of service criteria are not the basis for assessing a price increase under the terms of the Natural Gas Act and the rules, regulations, and orders promulgated thereunder.

(f) Under existing Commission regulations and applicable law, rate increases for producers of natural gas are determined on an area basis utilizing, inter alia, composite cost data after investigation and study of the various gas producing areas. This practice established by Area Rate Proceeding, Docket No. AR 61–1, et al. Opinion No. 468, 34 FPC 159 (1965), and affirmed by the Supreme Court in Permian Basin Area Rate Cases, 390 U.S. 747 (1968). Small producers will not be required to file the exhibit since they are regulated under Order No. 428 (36 F.R. 5598, March 25, 1971) and its amendments and will be monitored for Price Stabilization purposes by using reports submitted pursuant to Order No. 428 as amended and section 154.104 of the Commission's Regulations Under the Natural Gas Act which requires filing of annual statements. Moreover, area maximum rates determined in conformity with the Natural Gas Act and intended to balance all interests are constitutionally permissible according to the U.S. Supreme Court. Ibid. Since the Commission will take into consideration the relationship between establishing an area ceiling and national economic stabilization goals in setting area rates, and because of the Price Commission Regulations, § 300.16(d)(5), the requirements for filing the Price Stabilization Exhibit shall not apply to producers of natural gas. Staff shall develop Price Stabilization data on a composite basis in all area cases commenced on or before June 1, 1972.

§ 35.13 [Amended]

B. Section 35.13(b)(4)(iv), Part 35—Filing of Rate Schedules, of Subchapter B—Regulations under the Federal Power Act, as amended, of Chapter I of Title 18 of the Code of Federal Regulations is amended by adding Statement P as follows:

Statement P—Price stabilization exhibit.

(a) All applications for rate increases shall be accompanied by a special Price Stabilization Exhibit. This exhibit shall contain by cross reference or otherwise all of the necessary information by the applicant to demonstrate that the applicant's filing is in compliance with the intent and purposes of the Economic Stabilization Act of 1970, as amended, Executive Orders Nos. 11615, 11627, 11640 and with the criteria as hereinafter set out in (b), except as provided in (c), (d), (e), and (f).

(b) These criteria are as follows:

(1) The increase is cost justified and does not reflect future inflationary expectations.

(2) The increase is the minimum required to assure continued, adequate, and safe service or to provide for necessary expansion to meet future requirements.

(3) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the applicant.

(4) The increase does not reflect labor costs increases in excess of 5.5 percent per annum, unless the increase is required by a contract which becomes binding before November 8, 1972, or unless not allowing the excess cost would work an undue hardship on the employer.

(c) Whenever an applicant is of the opinion that a requested increase is in conformity with the Economic Stabilization Program even though any or all of the criteria in (b) are not met, the exhibit shall:

(1) Set forth the criteria in (b) to the extent possible.

(2) Contain a statement by the applicant justifying its position that the requested increase is in conformity with the goals of the Economic Stabilization Program.

(d) Justification for price increases in conformity with the above criteria shall not be required for price increases resulting from the pass-through of special allowable costs including taxes (except income tax), purchases gas costs, and fuel cost. However, the criteria shall apply to labor cost unless otherwise specified by this Commission.

(e) The requirements for this exhibit shall not apply to any applicant's price where the rate base-cost of service criteria are not the basis for assessing a price increase under the terms of the Federal Power Act and rules, regulations, and orders promulgated thereunder.

C. This order shall supersede Order No. 451, shall become effective 10 days after issuance, shall terminate automatically when the price stabilization program is appropriately terminated by Executive order or Act of Congress, and shall not apply to any cases filed prior to the effecitve date hereof.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-9144 Filed 6-16-72;8:47 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

Creamed Cottage Cheese; Standard of Identity

In the matter of amending the standard of identity for creamed cottage cheese (21 CFR 19.530) to permit listing safe and suitable defoaming agents as optional ingredients in the creaming mixture:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of November 24, 1971 (36 F.R. 22310), based on a petition submitted by Stein, Hall and Co., Inc., 605 Third Avenue, New York, NY 10016. The petition proposed that no greater quantity of safe and suitable defoaming agents be used than is necessary to provide the desired defoaming effect and that the presence of these optional ingredients be declared on the label when they are used in the manufacture of creamed cottage cheese. The purpose of the safe and suitable defoaming agents would be to eliminate the formation of foam both (1) in preparation of the creaming mixture and (2) during movement of the creamed cottage cheese before and during packaging. The presence of foam in the container creates difficulty in obtaining the correct fill; it also detracts from the appearance of the finished product.

Thirty-seven letters of comment were received in response to the proposal. Two letters gave an affirmative response and 17 letters misinterpreted the issue to be that of proposing the use of various vegetable gums which have been permitted as optional ingredients in the creaming mixture for cottage cheese since May 27, 1963. The other 18 comments were from individuals who expressed opposition to adding chemicals to food in general or to creamed cottage cheese in particular. However, no data were submitted by the respondents which would contravene data submitted by the petitioner in support of the proposed use of safe and suitable defoaming agents in creamed cottage cheese.

A review of the legislative intent of the Food Additives Amendment indicates that the use of additives for the purpose of safely keeping food longer and making it more tasteful and appetizing is specifically expressed as a principal purpose of the law. The Senate Committee Report No. 2422, 85th Congress, second session (H.R. 13254), expressed those purposes in these words:

> The second flaw in existing law which has proved detrimental to consumers, to processors, and to our national economy and which this bill seeks to remove is a provision which has inadvertently served to unnecessarily proscribe the use of additives that could enable the housewife to safely keep food longer, the processor to make it more tasteful and appetizing, and the nation to make use of advances in technology calculated to increase and improve our food supplies. Your committee agrees with the Food and Drug Administration that existing law should be changed to permit the use of such additives as our technological scientists may produce and which may benefit our people and our economy when the proposed usages of such additives are in amounts accepted by the Food and Drug Administration as safe.

The optional use of safe and suitable defoaming agents in creamed cottage cheese is an illustration of the Congressional intent.

"Safe and suitable" as defined in § 19.499 (21 CFR 19.499) and as applicable to the proposed amendment means (1) that such ingredients are functionally suitable substances that are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act or (2) if they are food additives as so defined, they shall be used in conformity with regulations established pursuant to section 409 of the act. Moreover the quantity of such optional defoaming agent used would be limited to that amount reasonably required to accomplish its intended effect and the ingredient would have to be declared by its common name on the label of the food.

The use of defoaming agents in creamed cottage cheese is for the functional purpose of inhibiting the formation of foam when the creaming mixture and the cheese are blended, conveyed, and packaged. This functional use of defoaming agents will benefit the consumer (1) by substantially eliminating the problem of not obtaining the correct fill of the container which may be caused by foam as well as (2) by making the product more appetizing by eliminating the defect in physical appearance which can result from the presence of foam when the product is packaged.

Having considered the information submitted by the petitioner, the comments received, and other relevant material, the Commissioner of Food and Drugs concludes that it will promote honesty and fair dealing in the interest of consumers to adopt the proposal to amend the standard of identity for creamed cottage cheese as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That § 19.530 be amended by adding a new subparagraph (8) to paragraph (b) and by revising paragraph (d)(1), as follows:

§ 19.530 Creamed cottage cheese; identity; label statement of optional ingredients.

* * * * *

(b) * * *

(8) Safe and suitable defoaming agents in a quantity not greater than reasonably required to accomplish their intended effect.

* * * * *

(d)(1) When one or a mixture of two or more of the optional ingredients listed in paragraph (b)(2) (ii), (iii), and (iv); (5); (6)(i); and (8) of this section is used, the label shall bear the statement "_____ added" or "with added _____" the blank being filled in with the common name or names of the optional ingredients used: *Provided, however*, That the name "vegetable gum" may be used in lieu of the specific names for carob (locust) bean gum, guar gum, gum karaya, and gum tragacanth.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: June 7, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-9171 Filed 6-16-72;8:50 am]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

ERYTHROMYCIN THIOCYANATE AND ARSANILIC ACID; ORDER VACATING REVOCATION

An order was published in the FEDERAL REGISTER of February 10, 1972 (37 F.R. 2958), revoking certain food additive regulations providing for the use of erythromycin thiocyanate and arsanilic acid in complete chicken and turkey feed. Said order was based on the withdrawal of NADA (new animal drug application) No. 10-979V for a fixed combination premix containing erythromycin thiocyanate and arsanilic acid.

The Agricultural and Veterinary Product Division, Abbott Laboratories, North Chicago, Ill. 60064, filed a written objection, within the 30 days provided for in said notice, seeking revocation of the order on the ground that the quantity of arsanilic acid allowed by the regulations differed from the quantity of arsanilic acid provided for in the withdrawn NADA.

The Commissioner of Food and Drugs concludes that the objection is valid and therefore that said order should be vacated. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 409, 512, 72 Stat. 1785–88 as amended, 82 Stat. 343–51; 21 U.S.C. 348, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), said order is vacated.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (6–17–72).

(Secs. 409, 512, 72 Stat. 1785–88 as amended, 82 Stat. 343–51; 21 U.S.C. 348, 360b)

Dated: June 8, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–9168 Filed 6–16–72;8:49 am]

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

Subpart A—Procedural and Interpretative Regulations

MISCELLANEOUS AMENDMENTS

Effective on the date of publication in the FEDERAL REGISTER (6–17–72).

1. In paragraph (a) of § 130.3 *New drugs for investigational use in human beings; exemptions from section 505(a)*, the following changes are made:

a. In subparagraph (2), Form FD 1571, division 10, unit C, the reference to "Chapter 140 of the Grants Administration Manual" should read "Chapter 1–40 of the Grants Administration Manual."

b. In subparagraph (12), Form FD 1572, division 3, the reference to "Chapter 140 of the Grants Administration Manual" should read "Chapter 1–40 of the Grants Administration Manual."

c. In subparagraph (13), Form FD 1573, division 2a, the reference to "Chapter 140 of the Grants Administration Manual" should read "Chapter 1–40 of the Grants Administration Manual."

2. In § 130.35 *Records and reports on new drugs and antibiotics for use by man for which applications or certification forms 5 and 6 became effective or were approved prior to June 20, 1963*, the "Addendum to Paragraph (b)" should be deleted. The Pharmaceutical Manufacturers Association suit is closed so this addendum is now obsolete.

Dated: June 7, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–9170 Filed 6–16–72;8:50 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Prochlorperazine, Isopropamide Sustained Release Capsules, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (13–201V) filed by Norden Laboratories, Inc., Lincoln, Nebr. 68501, proposing revised labeling regarding the safe and effective use of a combination drug containing prochlorperazine and isopropamide in sustained release capsules for the treatment of dogs in which gastrointestinal disturbances are associated with emotional stress. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act, sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding the following new section:

§ 135c.71 Prochlorperazine, isopropamide sustained release capsules, veterinary.

(a) *Specifications.* Prochlorperazine, isopropamide sustained release capsules, veterinary, contain either:

(1) 3.33 milligrams of prochlorperazine (as the dimaleate) and 1.67 milligrams of isopropamide (as the iodide), or

(2) 10 milligrams of prochlorperazine (as the dimaleate) and 5 milligrams of isopropamide (as the iodide).

(b) *Sponsor.* See code No. 026 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used for the treatment of dogs in which gastrointestinal disturbances are associated with emotional stress.

(2)(i) Capsules described in paragraph (a)(1) of this section are administered orally to dogs weighing from 4 to 15 pounds at the rate of 1 capsule twice daily. These capsules are administered orally to dogs weighing from 16 to 30 pounds at the rate of 1 or 2 capsules twice daily. For dogs weighing less than 4 pounds, administer orally an appropriate fraction of the contents of one of these capsules.

(ii) Capsules described in paragraph (a)(2) of this section are given to dogs weighing 30 pounds and over at the rate of 1 capsule twice daily.

(3) For use only by or on the order of a licensed veterinarian.

Effective date. This order shall become effective upon publication in the FEDERAL REGISTER (6–17–72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: June 6, 1972.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.72–9167 Filed 6–16–72;8:49 am]

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Revocation

In the FEDERAL REGISTER of May 5, 1970 (35 F.R. 7089), the Commissioner of Food and Drugs announced the conclusion of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Nolvapent; marketed by Fort Dodge Laboratories, Inc., Fort Dodge, Iowa 50501.

The announcement invited the manufacturer of said drug and any other interested persons to submit pertinent data on the drug's effectiveness. Neither Fort Dodge Laboratories, Inc., nor any other interested person furnished adequate data to support the effectiveness of the above-named product or any similar products.

Nolvapent was the subject of a notice of drug deemed adulterated which was published in the FEDERAL REGISTER of February 15, 1972 (37 F.R. 3375). Since the above-named product has been removed from the market and no efficacy data have been submitted for similar drugs, the Commissioner concludes that the antibiotic drug regulations should be amended to revoke provisions for certification of this and similar drugs due to a lack of substantial evidence that they will have the effectiveness they purport or are represented to have.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 141a and 146a are amended by revoking (1) § 141a.65 *Penicillin-streptomycin-neomycin in oil, veterinary; penicillin-dihydrostreptomycin-neomycin in oil, veterinary; penicillin-streptomycin-neomycin ointment, veterinary; penicillin-dihydrostreptomycin-neomycin, ointment, veterinary,* (2) § 141a.94 *Procaine penicillin-streptomycin - neomycin - erythromycin in oil; procaine penicillin-dihydrostreptomycin-neomycin-erythromycin in oil,* (3) §141a.96 *Penicillin-streptomycin-neomycin-polymyxin ointment, veterinary; penicillin-dihydrostreptomycin-neomycin-polymyxin ointment, veterinary,* (4) § 146a.22 *Penicillin-streptomycin - neomycin - polymyxin ointment, veterinary; penicillin-dihydrostreptomycin-neomycin-polymyxin ointment, veterinary,* (5) § 146a.83 *Procaine penicillin-streptomycin-neomycin-erythromycin in oil; procaine penicillin-dihydrostreptomycin-neomycin-erythromycin in oil,* and (6) § 146a.89 *Penicillin-streptomycin-neomycin in oil, veterinary; penicillin-dihydrostreptomycin-neomycin in oil, veterinary; penicillin-streptomycin-neomycin ointment, veterinary; penicillin-dihydrostreptomycin-neomycin ointment, veterinary.*

Any person who would be adversely affected by the removal of any such drug from the market may file, within 30 days after publication hereof in the FEDERAL REGISTER, objections to this order stating reasonable grounds and requesting a hearing on such objections. A statement of reasonable grounds for a hearing must identify the claimed errors in the NAS/NRC evaluation and identify any adequate and well controlled investigation on the basis of which it could reasonably be concluded that these drugs would have the effectiveness claimed and would be safe for their intended use.

Objections and requests for a hearing should be filed (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852. Objections and requests for a hearing which are received in response to this order may be seen in the

above office during business hours, Monday through Friday.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER.

(Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b)

Dated: June 8, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-9166 Filed 6-16-72;8:49 am]

PART 148i—NEOMYCIN SULFATE

Combination Drug Containing Neomycin Sulfate and Amphotericin B for Oral Use; Revocation

In the FEDERAL REGISTER of July 2, 1970 (35 F.R. 10793), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on a certain oral preparation containing neomycin sulfate and nystatin. The Food and Drug Administration concluded that "there was a lack of substantial evidence, as defined in the Federal Food, Drug, and Cosmetic Act, that the * * * drug is effective as a fixed combination for its claimed clinical effect and that each component of the drug contributes to the total effects claimed for such drug." Subsequently, an order was published in the FEDERAL REGISTER of November 2, 1971 (36 F.R. 20938), amending the antibiotic drug regulations to revoke this oral preparation from the list of drugs acceptable for certification.

Also in the FEDERAL REGISTER of November 2, 1971 (36 F.R. 20985), the Commissioner proposed revoking provisions for certification of a related preparation, Neomycin Fungizone Tablets (incorrectly referred to as Fungizone Tablets in the proposal). This preparation contains neomycin sulfate and amphotericin B. An approved Form 5 antibiotic drug application (NDA 60–514) is held for this drug by E. R. Squibb & Sons, Inc., 5 Georges Road, New Brunswick, NJ 08903. This product was not reviewed by the Academy. In this proposal, however, the Food and Drug Administration, having evaluated data originally filed in support of efficacy of the preparation, announced its conclusion that "there is a lack of substantial evidence, as defined in the Federal Food, Drug, and Cosmetic Act, that this drug is effective as a fixed combination for its claimed clinical effects, and that each component of the drug contributes to the total effects claimed for such drug." The proposal of November 2, 1971, invited written comments within 30 days. There were no responses.

Accordingly, the Commissioner concludes that the antibiotic drug regulation providing for certification of such drug should be revoked and that all outstanding certificates which have been issued thereunder should also be revoked.

Therefore, pursuant to provisions of the Fereral Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51 as amended, 59 Stat. 463 as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner (21 CFR 2.120), Part 148i is amended by revoking § 148i.45 *Neomycin sulfate-amphotericin B tablets.* All certificates issued under this section are also revoked.

Any person who will be adversely affected by the removal of any such drug from the market may file objections to this order, request a hearing, and show reasonable grounds for the hearing. The statement of reasonable grounds and request for a hearing shall be submitted in writing within 30 days after publication hereof in the FEDERAL REGISTER, shall state the reasons why the antibiotic drug regulations should not be so amended, and shall include a well organized and full factual analysis of the clinical and other investigational data the objector is prepared to prove in support of his objections.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data incorporated into or referred to by the objections and from the factual analysis in the request for a hearing that no genuine issue of fact precludes the action taken by this order, the Commissioner will publish an order giving his findings and conclusions on such data.

If a hearing is requested and justified by the objections, the issues will be defined and a hearing examiner named to conduct the hearing. The provisions of Subpart F of 21 CFR Part 2 shall apply to such hearing except as modified by 21 CFR 146.1(f), and shall apply to judicial review in accord with section 701 (f) and (g) of the Federal Food, Drug, and Cosmetic Act. (35 F.R. 7250, May 8, 1970.)

Objections and requests for a hearing should be filed (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20582. Received objections and requests for a hearing may be seen in the above office during regular business hours, Monday through Friday.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER. If objections are filed, the effective date will be extended for such period of time as necessary to rule thereon. In so ruling, the Commissioner will specify another effective date and how the outstanding stocks of the affected drugs are to be handled.

(Secs. 502, 507, 52 Stat. 1050–51 as amended, 59 Stat. 463 as amended; 21 U.S.C. 352, 357)

Dated: June 7, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-9169 Filed 6-16-72;8:50 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 0—COMMISSION ORGANIZATION

Location of Field Offices and Monitoring Stations; Correction

In the matter of editorial amendment of § 0.121(a) of the Commission's rules and regulations.

Section 0.121(a) in the Appendix to the order adopted April 14, 1972, in the above entitled matter (37 F.R. 8076) is corrected with respect to Radio District 19. The first line preceding the list of counties should read: "All counties except District 18."

Released: June 13, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-9176 Filed 6-16-72;8:47 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 35—WILDERNESS PRESERVATION AND MANAGEMENT

Miscellaneous Amendments

50 CFR Part 35 was originally published on page 25426 of the December 31, 1971, issue of the FEDERAL REGISTER as F.R. Doc., 71–19113, and became effective on January 30, 1972.

Sections 35.5(b) and 35.10 are amended as follows:

§ 35.5 [Amended]

In the first sentence of § 35.5(b) substitute the word "motorboats" for the words "motorized equipment."

§ 35.10 [Amended]

In § 35.10 substitute the words "the wilderness resource and values" for the words "preferred vegetative types."

Because these amendments to Part 35 provide immediate guidance and information to the public in the use of designated wilderness areas and relate to internal wilderness area management procedures, notice and public procedure thereon is deemed unnecessary, and these amendments will become effective upon publication in the FEDERAL REGISTER (6–17–72).

SPENCER H. SMITH,
Director, Bureau of Sport Fisheries and Wildlife.

JUNE 9, 1972.

[FR Doc.72-9134 Filed 6-16-72;8:45 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1890s]

[AL-71(444)]

LEASEHOLD INTERESTS IN NONFARM TRACTS

Proposed Rural Housing Loan Policy

Notice is hereby given that the Farmers Home Administration has under consideration amending Part 1890s, "Section 502 Rural Housing Loans on Leasehold Interests in Nonfarm Tracts," Title 7, Code of Federal Regulations (36 F.R. 19670), by deleting § 1890s.3(c). This deletion would remove the prohibition against making loans on leasehold interests created on nonfarm tracts by a nonpublic body after January 1, 1966, when the State Director determines that long-term leasing of homesites by nonpublic bodies is a well established practice and such leaseholds are freely marketable in the area.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Assistant Administrator for Management, Farmers Home Administration, U.S. Department of Agriculture, Room 5013, South Building, Washington, D.C. 20250, within 30 days after date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Assistant Administrator for Management during regular business hours (8:15 a.m.–4:45 p.m.).

(Sec. 510, 63 Stat. 437, 42 U.S.C. 1480; Order of Acting Secretary of Agriculture, 36 F.R. 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 F.R. 21529)

Dated: June 1, 1972.

JOSEPH HASPRAY,
Deputy Administrator,
Farmers Home Administration.

[FR Doc.72-9187 Filed 6-16-72;8:49 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-NW-16]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is consdering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Burley, Idaho, transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures, and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The alteration to the Transition Area would provide controlled airspace protection to aircraft using the direct offairway route between the Burley VOR TAC and the Richfield INT.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (37 F.R. 2143) the description of the Burley, Idaho, transition area is amended as follows:

Between the words "* * * extending 7 miles northwest of the VORTAC;" and "and that airspace extending upward from 1,200 feet * * *", insert: "within 4 miles each side of the Burley VORTAC 344° radial, extending to the north edge of V-500;".

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Wash., on June 8, 1972.

C. B. WALK, Jr.,
Director, Northwest Region.

[FR Doc.72-9140 Filed 6-16-72;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-AL-20]

FEDERAL AIRWAY

Proposed Revocation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would revoke VOR Federal airway No. 463.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, AK 99501. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

V-463 airway is presently designated from Anchorage, Alaska, to the intersection of Anchorage 330° T(305° M) and Big Lake, Alaska, 294° T(268° M) radials (7-mile Intersection). This airway was utilized as an alternate route for the movement of Anchorage terminal traffic. However, it has not been determined that this airway is no longer required for air traffic control purposes, and action is proposed herein to revoke V-463 airway.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on June 9, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-9141 Filed 6-16-72;8:46 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 600]

STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS

Notice of Public Hearing

In F.R. Doc. 72-9104, filed June 14, 1972, appearing in the issue published Thursday, June 15, 1972 (37 F.R. 11903), the following provision should be added:

Any additional comments must be submitted in writing to the Secretary no later than July 21, 1972.

By direction of the Commission dated June 6, 1972.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.72-9130 Filed 6-16-72;8:45 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

30-POUND MF (MACHINE FINISH) KRAFT WRAPPING PAPER FROM CANADA

Withholding of Appraisement Notice

Information was received on June 3, 1971, that 30-pound MF (Machine Finish) kraft wrapping paper from Canada was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 17, 1971, on page 15672. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (sec. 203 of the Act; 19 U.S.C. 162) of 30-pound MF (Machine Finish) kraft wrapping paper from Canada is less, or likely to be less, than the foreign market value (sec. 205 of the Act; 19 U.S.C. 164).

Statement of reasons. The information before the Bureau tends to indicate that the probable basis of comparison for fair value purposes will be between purchase price and home market price of such or similar merchandise.

Purchase price will probably be calculated by deducting freight, brokerage fees, U.S. Customs duties, and, where appropriate, cash discounts from the C & F duty-paid price.

Home market price will probably be based on the delivered-customer-premises price, with a deduction for inland freight. Adjustments will probably be made for commissions and selling expenses, where appropriate.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price will be lower than home market price.

Customs officers are being directed to withhold appraisement of 30-pound MF (Machine Finish) kraft wrapping paper from Canada in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to § 153.34(b), Customs Regulations (19 CFR 153.34(b)), shall become effective upon publication in the FEDERAL REGISTER. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: June 12, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-9151 Filed 6-16-72;8:46 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[Docket No. 72-3]

BRUCE E. HODGES, M.D.

Notice of Hearing

Notice is hereby given that on March 31, 1972, the Bureau of Narcotics and Dangerous Drugs, Department of Justice, issued to Bruce E. Hodges, M.D., an order to show cause as to why the Bureau of Narcotics and Dangerous Drugs Registration No. AH1292159 issued to him pursuant to section 303 of the Controlled Substances Act (21 U.S.C. 823) should not be revoked.

Thirty days having elapsed since the said order to show cause was received by Dr. Bruce E. Hodges, and written request for a hearing having been filed with the Director of the Bureau of Narcotics and Dangerous Drugs, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on June 21, 1972, in room 812 of the Bureau of Narcotics and Dangerous Drugs, 1405 Eye Street NW., Washington, DC 20537.

Dated: June 13, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.72-9131 Filed 6-16-72;8:45 am]

[Docket No. 72-2]

LARIS CARROL HEBERT, M.D.

Notice of Hearing

Notice is hereby given that on March 24, 1972, the Bureau of Narcotics and Dangerous Drugs, Department of Justice, issued to Laris Carrol Hebert, M.D., an order to show cause as to why the Bureau of Narcotics and Dangerous Drugs Registration No. AH3415494 issued to him pursuant to section 303 of the Controlled Substances Act (21 U.S.C. 823) should not be revoked.

Thirty days having elapsed since the said order to show cause was received by Dr. Laris Carrol Hebert, and written request for a hearing having been filed with the Director of the Bureau of Narcotics and Dangerous Drugs, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on June 21, 1972, in Room 812 of the Bureau of Narcotics and Dangerous Drugs, 1405 Eye Street NW., Washington, DC 20537.

Dated: June 13, 1972.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.72-9132 Filed 6-16-72;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[Docket No. M 72-34]

OLD BEN COAL CORP.

Petition for Modification of Mandatory Safety Standard

Notice is hereby given that Old Ben Coal Corp. (petitioner) has filed a petition to modify the application of section 303(o) of the Act as implemented by § 75.316-2(b) of the regulations prescribed by the Secretary on November 12, 1970, with respect to its No. 24 Mine.

Paragraph (b) of § 75.316-2 *Criteria for approval of ventilation system and methane and dust control plan* of the regulations provides as follows:

(b) Permanent stoppings, overcasts, undercasts, and shaft partitions should be constructed of substantial, incombustible material, such as concrete, concrete blocks, cinder block, brick or tile, or some other incombustible material having sufficient strength to serve the purpose for which the stopping or partition is intended. In heavy or caving areas, timbers laid longitudinally 'skin to skin' may be used. Such permanent stoppings should be erected between the intake and return aircourses in entries and should be maintained to and including the third connecting crosscut outby the faces of the entries. Permanent stoppings should be

used to separate belt haulage entries from entries used as intake and return aircourses.

Petitioner requests that the application of § 75.316–2(b) be modified, or that its interpretation and application be modified, to use stoppings in panel or room entries constructed of chemically treated fire retardent wood which meets the requirements of ASTM Test E–84 and has been so certified by Underwriters Laboratories, Inc., and has been given an FR–S classification or rating by Underwriters Laboratories, Inc., indicating that it has a flame spread of 25 or less with no evidence of significant combustion when tested for 30 minutes.

Petitioner's position is as follows:

The petitioner alleges that stoppings constructed of chemically treated fire retardant wood when used in its Mine No. 24 in panel (or room) entries—and this is the only use here in issue—provide no less than the same measure of protection to the miners than stoppings constructed of concrete, concrete blocks, cinder block, brick or tile in such locations, and that indeed a failure to recognize this fact results in a diminution of safety to the miners in such mine. The entries in which the petitioner has historically used stoppings constructed of chemically treated fire retardent wood, and in which it now seeks to use such stoppings, are subject to heavy crushing pressures introduced by the mining process which could, and often do, cause serious damage to stoppings built of concrete, concrete blocks, cinder block, brick, tile, or other inflexible materials. These pressures frequently destroy the structural integrity of such stoppings, but in the petitioner's experience, rarely destroy the structural integrity of wood stoppings. Petitioner emphasizes that the stoppings are not designed for the purpose of supporting the roof or holding the floor in place, but rather are designed as an essential and integral part of a ventilation system for the purpose of deflecting and directing air in a predetermined course. Petitioner submits, therefore, that in determining whether or not the material used for a stopping is of "sufficient strength to serve the purpose for which the stopping or partition is intended" the "purpose for which the stopping * * * is intended" is ventilation, not support. In those instances where stoppings are required to be in place for substantial periods of time, e.g., for more than 1 year, and where stoppings are required in areas that are known not to be heavy caving areas, the petitioner uses concrete block for the construction of such stoppings. However, for stoppings in panels or room entries, which are short-lived—the normal life in the petitioner's experience being 4 to 6 months—stoppings constructed of concrete, concrete blocks, cinder block, brick or tile do not, because of their inherent inflexibility, provide the permanent barrier that is required for an effective ventilation system. They crush out, blow out, or overturn because of their inability to yield to the pressures of caving roofs and heaving floors, thus destroying their structural integrity and defeating the very purpose for which they were intended, resulting in a diminution of safety to the miners. In contrast, when wooden stoppings are used and subjected to the same pressures, the wood yields because of its unusual resiliency and strength, and although individual pieces of the wood used to construct the stopping may bend, and on occasion crack, the stoppings retain their structural integrity and continue to effectively serve the purpose for which they were intended.

* * * * *

Such modification would restore to the Petitioner, subject to the continuing supervision of Federal Mine Inspectors, the ability to provide a ventilation system of maximum continuing effectiveness at its Mine No. 24, without in any way diminishing the safety of its miners.

Parties interested in this petition shall file their answer or comments and, if they wish a hearing, their request for one, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director,
Office of Hearings and Appeals.

JUNE 9, 1972.

[FR Doc.72–9133 Filed 6–16–72;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

AMERICAN CYANAMID CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (Sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2B2797) has been filed by American Cyanamid Co., Wayne, N.J. 07470, proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* be amended in paragraph (b)(2) to change the basis of the limitation on the amount of glyoxal permitted from the present maximum of 0.8 percent by weight of the dry coating solids to a maximum of 6 percent by weight of the starch or protein.

Dated: June 7, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72–9172 Filed 6–16–72;8:50 am]

Office of the Secretary

FOOD AND DRUG ADMINISTRATION

Statement of Organization, Functions, and Delegations of Authority

Part 6 (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare (35 F.R. 3685–92, dated February 25, 1970) is amended to reflect the reorganization of the Bureau of Product Safety.

Section 6B is amended as follows:

SECTION 6B *Organization.* * * *

(p) *Bureau of Product Safety.* Develops and conducts programs to reduce injuries and to eliminate hazards associated with consumer products, toys, flammable fabrics, and hazardous substances.

Supports research on poisoning treatment problems and prevention techniques and provides a national network of poison control centers with toxicity and treatment information on toxic substances. Conducts investigational, analytical, and research activities to evaluate the nature and scope of consumer product safety problems; and develops and implements corrective product safety problems; and develops and implements corrective programs.

Plans, directs, coordinates, and evaluates FDA's surveillance and compliance activities covering industries and consumer products falling under the responsibility of the Bureau.

Develops or coordinates the development of model codes and other standards covering consumer product industry practices; and encourages manufacturers and importers to voluntarily adopt good manufacturing practices that reduce risks in consumer products.

Plans and develops educational programs and issues educational, advisory, and informational releases designed to make the consumer and industry aware of potential health and safety hazards and relevant standards, regulations, and research concerning consumer products.

Performs analyses of regulatory samples as may be necessary to support FDA's compliance program relating to the industries and consumer products falling under the responsibility of the Bureau.

(p–1) *Office of the Director.* Plans, evaluates, and provides technical direction to Bureau programs and related operating policies. Directs the Bureau's personnel and financial management systems as well as other administrative services.

Directs the development of the Bureau's product safety program.

Plans and prepares product safety information for audiences within and outside the Bureau.

Reviews, initiates, and maintains liaison with outside sources on the development of standards to meet the public need in consumer products. Recommends to the Office of the Commissioner changed or additional legislative authority.

Provides the Agency with authoritative advice on significant existing and anticipated problems related to FDA responsibilities in the area of product safety.

Represents the Agency at meetings with representatives of the Department, other Government Agencies, and private industry; and explains FDA plans, programs, policies, and regulations as they relate to product safety.

(p–2) *Division of Compliance.* Advises the Bureau Director and other FDA officials on legal administrative problems, regulatory problems, and administrative policies concerning FDA's compliance responsibilities in product safety.

Develops compliance and surveillance programs covering both foreign and domestic consumer products.

Prepares and processes, on the basis of technical information supplied by the operating components, proposals for establishment of standards and regulations for consumer products.

Provides interpretations and guidance designed to improve compliance by industry.

Provides support and guidance to the field offices in handling legal actions and is responsible for Headquarters case development, coordination, and contested case assistance.

Develops and coordinates studies to measure the degree of compliance by regulated industries with statutes and regulations enforced by the Bureau.

Coordinates Bureau and industry programs leading to the voluntary development of product standards.

(p-3) *Division of Chemical Hazards.* Develops, supervises, and coordinates a program of toxicological, chemical, and medical evaluation of chemical products.

Develops operational plans and long-range programs for standards development and research for chemical products.

Recommends legislative and policy changes regarding chemical hazards. plans and coordinates integrated scientific data retrieval systems. Coordinates program activities for the collection and dissemination of medical treatment data to the national poison control network. Conducts and supports research and methods development on hazards associated with the use of chemical products.

Provides for the analyses of regulatory samples as may be necessary to support compliance programs.

Provides scientific, medical, editorial review, and initiates articles for publication.

Provides scientific and medical support to other Bureau programs.

(p-4) *Injury Data and Control Center.* Develops and conducts programs designed to identify current and potential injury hazards of consumer products that may be susceptible to reduction through educational and/or changes in product design, materials, fabrication, or performance characteristics.

Conducts injury surveillance studies to determine the extent, nature, and effect of injuries due to consumer products.

Designs investigating reporting systems, and reviews reports of investigation of injuries, deaths, and economic losses resulting from the normal use or reasonable misuse of consumer products.

Conducts special in-depth case study investigations of injuries or deaths, identifying etiologic patterns and specific products.

Suggests possible standards and criteria to be included in standards covering safety characteristics of consumer products.

Plans, conducts, and participates in projects and demonstrations of the Bureau designed to educate the public on product safety.

Develops program and educational materials on consumer product hazards, and maintains a reference service of worldwide technical information on product safety.

Plans, develops, and/or conducts educational and training programs for public officials, and private individuals involved in injury control programs.

(p-5) *Division of Children's Hazards.* Develops and carries out technical programs which are designed to reduce the incidence of deaths or injuries of children using toys, playground equipment, recreational devices, infant furniture, nursery equipment and supplies, and other types of products designed for children or substantially affecting children.

Formulates performance criteria, design specifications, and construction methods which will improve the degree of safety or reduce the incidence of injuries involved in the use of children's products.

Identifies needs and develops preliminary drafts for new and revised standards and regulations which are to be met by industry in order to reduce the hazards of the children's products.

Promotes a better understanding of the requirements and objectives of the Child Protection and Toy Safety Act, and those regulations concerning children's products which are enforced by the Bureau, and encourages voluntary compliance with those regulations.

Evaluates the effectiveness of proposed and published standards and regulations, and of proposed and published test methods used to measure compliance.

(p-6) *Division of Mechanical, Electrical, and Thermal Hazards.* Develops and carries out technical programs which are designed to reduce the incidence of death or injury of consumers using mechanical, electrical, and thermal products which are generally found in and around the household.

Formulates performance criteria, design specifications, and construction methods which will improve the degree of safety or reduce the incidence of accidents in the use of these consumer products.

Promotes a better understanding of the requirements and objectives of the Bureau of Product Safety in achieving a reduction of the hazards, injuries, and deaths that are associated with the use of mechanical, electrical, and thermal consumer products, and encourages and guides industry in establishing voluntary standards to achieve this reduction.

Evaluates the effectiveness of proposed and published standards and regulations.

Dated: June 13, 1972.

STEVEN D. KOHLERT,
Deputy Assistant Secretary for Management.

[FR Doc.72-9179 Filed 6-16-72;8:47 am]

PRINTING AND PUBLICATIONS MANAGEMENT STAFF, OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION

Statement of Organization, Functions, and Delegations of Authority

Part 1 of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare, Office of the Secretary, Office of the Deputy Assistant Secretary for Administration, is amended to add new Chapter 1T040903, Printing and Publications Management Staff. The new chapter reads as follows:

SEC. 1T040903.00 *Mission.* The Printing and Publications Management Staff of the Office of Administration is headed by a Director who reports directly to the Director, Office of Administrative Services, and is under the overall supervision of the Deputy Assistant Secretary for Administration. The Staff has responsibility for the management of a Departmentwide printing and publications management program pursuant to provisions of the U.S. Government Printing and Binding Regulations of the Joint Committee on Printing of the Congress of the United States (44 U.S.C. 103).

SEC. 1T040903.10 *Functions.* Specifically, the Printing and Publications Management Staff has responsibility, through its Director and the Deputy Assistant Secretary for Administration, for the following:

A. Advises the Deputy Assistant Secretary for Administration and top Departmental management on matters pertaining to the management and direction of the Department's printing and publications program and provides leadership and guidance to the operating agencies in planning, executing, and evaluating printing and reprographics programs;

B. Provides liaison for the Department with the Joint Committee on Printing of the Congress and with the Government Printing Office;

C. Provides Department liaison with other Government agencies and with private industry on matter pertaining to printing and publications management;

D. Coordinates publications management matters with the Office of Public Affairs, Office of the Secretary, DHEW;

E. Serves as the central Department resource on coordinating and monitoring the testing of newly-developed reprographics equipment, systems, and techniques;

F. Directs a program of periodic review and evaluation of printing and publications management regulations throughout the Department;

G. Prepares the Department's position and recommendations on proposed changes to the Government Printing and Binding Regulations; and

H. The Director chairs the Department Committee on Printing Management.

Dated: June 13, 1972.

STEVEN D. KOHLERT,
Deputy Assistant Secretary for Management.

[FR Doc.72-9180 Filed 6-16-72;8:47 am]

FARM CREDIT ADMINISTRATION

FARM CREDIT SYSTEM BONDS AND DEBENTURES

Use of Present Supplies of Unissued Engraved Blank Paper Stock

Pursuant to the authority vested in the Farm Credit Administration by the Farm Credit Act of 1971 (Public Law 92–181, December 10, 1971, 85 Stat. 583), notice is hereby given that, in order to prevent waste, present inventories of unissued, engraved, blank paper stock of Consolidated Federal Farm Loan Bonds of the Twelve Federal Land Banks, and completed paper stock of Consolidated Collateral Trust Debentures of the Twelve Federal Intermediate Credit Banks and Consolidated Collateral Trust Debentures of the Thirteen Banks for Cooperatives shall continue to be used for bonds and debentures issued by said banks on and after the date hereof until said inventories have been exhausted. References in such bonds and debentures to the Act of Congress approved July 17, 1916, the Federal Farm Loan Act, and the Farm Credit Act of 1933, which Acts were repealed by the Farm Credit Act of 1971, shall be deemed to be to the Farm Credit Act of 1971, and the obligations of the issuers and the rights of the holders of said bonds and debentures shall be determined in accordance with said 1971 Act.

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72–9150 Filed 6–16–72;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19520, 19521]

PERSKY AIR SERVICE AND HOLLAND FLYING SERVICE

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Arthur C. Persky, doing business as Persky Air Service, Docket No. 19520, File No. 30–A–L–42; International Aerospace Services, Inc., doing business as Holland Flying Service, Docket No. 19521, File No. 2–A–L–42; for an aeronautical advisory radio station to serve the Valdosta Municipal Airport, Valdosta, Ga.

1. The Commission's rules (§ 87.251 (a)) provide that only one aeronautical advisory station may be authorized to operate at a landing area. The above-captioned applications both seek Commission authority to operate an aeronautical advisory station at the same landing area (Valdosta Municipal Airport, Valdosta, Ga.) and are, therefore, mutually exclusive. Accordingly, it is necessary to designate the applications for comparative hearing in order to determine which application should be granted. Except for the issues specified herein, each applicant is otherwise qualified.

2. The application of International Aerospace Services, Inc. (International), has been filed as a combination renewal of an existing advisory station license (call sign WCOG, licensed to Wismer Holland, doing business as Holland Flying Service) and an assignment of the license from Wismer Holland to International. Since the Wismer Holland authorization (WCOG) expired on January 20, 1972, and the application for assignment and renewal was not filed with the Commission until March 31, 1972, the application is treated as a new application.

3. In view of the foregoing: *It is ordered,* That pursuant to the provisions of section 309(e) of the Communication Act of 1934, as amended, and § 0.331(b) (21) of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following issues:

a. To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-base operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employess in aviation and aviation communications;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87,257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-base operators.

b. To determine in light of the evidence adduced on the foregoing issues which, if either, of the applications should be granted.

4. *It is further ordered,* That to avail themselves of an opportunity to be heard, Persky Air Service and International, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Adopted: June 12, 1972.

Released: June 13, 1972.

[SEAL] JAMES E. BARR,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.72–9177 Filed 6–16–72;8:47 am]

FEDERAL MARITIME COMMISSION

CANADIAN PACIFIC RAILWAY CO.

Revocation of Certificates of Financial Responsibility

Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P–39 and Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages No. C–1,011.

Canadian Pacific Railway Co., Windsor Station, Montreal, Quebec, Canada.

Whereas, Canadian Pacific Railway Co. has ceased to operate the passenger vessel Empress of Canada; and

Whereas, Canadian Pacific Railway Co. has returned Certificate (Performance) No. P–39 and Certificate (Casualty) No. C–1,011 for revocation;

It is ordered, That Certificate (Performance) No. P–39 and Certificate (Casualty) No. C–1,011, covering the Empress of Canada, be and are hereby revoked effective June 9, 1972.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on Canadian Pacific Railway Co.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–9184 Filed 6–16–72;8:48 am]

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances

said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Elliott B. Nixon, Esq., Burlingham Underwood & Lord, Broadway, New York, NY 10004.

Agreement No. 8210–17 amends the basic Conference Agreement to include within its scope cargo received at interior points in Continental Europe and moving through ports in Germany, the Netherlands, Belgium, and France from Hamburg to the Spanish border, whether or not moving under a through bill of lading.

Dated: June 14, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 72-9182 Filed 6-16-72;8:48 am]

PORT OF OAKLAND AND HARRY H. BLANCO CO.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. J. Kerwin Rooney, Port Attorney, Port of Oakland, 66 Jack London Square, Post Office Box 2064, Oakland, CA 94607.

Agreement No. T–2587–1, between the Port of Oakland (Oakland) and Harry H. Blanco Co. (Blanco), doing business as Mid-Pacific Freight Forwarders, amends the basic agreement which provides for the license by Oakland of certain office space, covered truck dock area, maintenance shop area, and open dock area to Blanco for use as a container freight station and for other uses incidental thereto. The purpose of the amendment is to add a provision to the agreement allowing Blanco to sublicense office space to the United States Customs Service.

Dated: June 14, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-9183 Filed 6-16-72;8:48 am]

FEDERAL POWER COMMISSION

[Docket No. RP71–137]

EL PASO NATURAL GAS CO.

Notice of Motion for Order Permitting Utilization of Accounts in Conjunction With Existing Tracking Authority

JUNE 9, 1972.

Take notice that El Paso Natural Gas Co. (El Paso), on May 31, 1972, filed a motion requesting the Commission to issue an order in the above-captioned proceeding permitting El Paso to utilize Account 186, Miscellaneous Deferred Debits, of the Commission's Uniform System of Accounts, or a successor account, in conjunction with El Paso's existing authority to file changes in its rates to reflect changes in purchased gas costs on its Northwest Division System.

In support of its motion El Paso states that it has utilized its tracking authority in Docket No. RP71–137 on several occasions, having made three filings within the last 5 months to track increases in purchased gas costs on its Northwest Division System. El Paso says that subsequent to its filing on March 17, 1972, it received numerous objections from its Northwest Division System customers and from Northwest regulatory commissions as to the frequency of its tracking filings. El Paso states that while the customers were not opposed to El Paso's recoupment of costs of gas increases passed on by it suppliers, the customers noted with alarm the growing resistance among their respective consumers and state regulatory authorities to their efforts to pass through these tracking increases in their rates. In light of the increasing resistance to the frequency of its tracking filings El Paso proposes that it be permitted to ultilize Account 186, or a successor account, in conjunction with its existing tracking authority in Docket No. RP71–137. If such permission were granted El Paso says it envisions the following procedure, as set forth on pages 5 and 6 of its motion:

(i) El Paso would file only one (1) notice of rate change to track changes in Northwest Division System purchased gas costs and such single filing would be made on December 31, 1972 (the last day presently permitted for such filings), to be effective February 1, 1973; (ii) whenever increases in the cost of gas purchased for resale to its Northwest Division System customers, not reflected in the Northwest Division System jurisdictional rates which became effective on April 17, 1972, cause a net change in the annualized cost of gas purchased of at least one-tenth of one cent (0.1¢) per Mcf (at 14.73 p.s.i.a.), based upon El Paso's test period total gas sales as to the Northwest Division System,[13] El Paso would debit Account 186, or a successor account, for such increases on a monthly basis, rather than filing a notice of change in rates; and (iii) in accordance with the single notice of rate change to be filed on December 31, 1972, the jurisdictional rates for the Northwest Division System would be increased to reflect the annualized net change occasioned by the increased purchased gas costs, plus a surcharge necessary to amortize the balance in Account 186, or a successor account, over the 6-month period extending through July, 1973, at the termination of which the rates would be reduced to reflect the elimination of said surcharge. Similarly, if, as a result of Commission action, any supplier should be ordered to reduce rates and make refunds, thereby reducing El Paso's cost of purchased gas for the Northwest Division System, Account 186, or its successor, would be credited monthly and the filing of December 31, 1972 would reflect the effect thereof. * * *

El Paso says that if this methodology is adopted it would obviate the necessity for frequent tracking filings during the remaining of the term of the outstanding Northwest Division System tracking authority, thus eliminating the objections voiced by El Paso's customers and Northwest regulatory bodies, while allowing El Paso to recover increased purchased gas costs but eliminating none of the restrictions presently extant on El Paso's existing tracking authority.

El Paso says that the relief it seeks is in part prompted by the uncertainty surrounding the Commission's Order No. 452, issued April 14, 1972, Docket R–406, wherein the Commission prescribed regulations governing the filing by pipeline companies of purchased gas cost adjustment provisions in their FPC Gas Tariffs. El Paso states that upon clarification of these uncertainties it would contemplate the filing of a purchased gas cost adjustment provision in the future.

Copies of the motion were served on all parties to Docket No. RP71–137, all Northwest Division System customers and interested State regulatory commissions.

Answers or comments relating to the motion may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before June 23, 1972.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9145 Filed 6-16-72;8:48 am]

[13] (Footnote omitted.)

[Docket No. RP72-130]

EL PASO NATURAL GAS CO.

Notice of Proposed Changes in Tariff

JUNE 8, 1972.

Take notice that El Paso Natural Gas Co. (El Paso), on May 22, 1972, tendered for filing proposed changes in Rate Schedules FS-25, FS-29, and FS-30 of its FPC Gas Tariff, Original Volume No. 2A, to become effective as of March 1, 1972.

The principal change proposed by the filing is the conversion of the rate charged to Pioneer Natural Gas Co. (Pioneer) under each of the above-mentioned rate schedules to a rate equivalent to the rate being collected from time to time under El Paso's Rate Schedule X-1 of its FPC Gas Tariff, Original Volume No. 1 which El Paso says is consistent with the Commission's order issued August 21, 1969, as amended March 20, 1970, in Docket No. CP69-23 (42 FPC 562). Changes other than those in rate level relate to certain modifications of the subject rate schedules as more fully described in the filing.

El Paso states that a March 1, 1972, effective date for the proposed changes has been agreed upon with Pioneer and requests waiver of the Commission's notice requirements in order to permit the tariff changes to become effective as of that date. El Paso requests that the revised tariff sheets tendered for filing be accepted subject to final determination of the rate level under Rate Schedule X-1 in Docket No. RP71-13.

A copy of the filing was served upon Pioneer.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9158 Filed 6-16-72;8:46 am]

[Docket No. CI72-817]

LONE STAR EXPLORATION, INC.

Notice of Application

JUNE 14, 1972.

Take notice that on June 9, 1972, Lone Star Exploration, Inc. (applicant), 2010 Republic National Bank Building, Dallas, Tex. 75201, filed in Docket No. CI72-817 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) from the Southwest Tatum, Hosston-Cotton Valley Field, Rusk County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to United up to 5,000 Mcf of natural gas per day at 35 cents per Mcf at 14.65 p.s.i.a within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant states that it is the owner of an undivided one-half interest in the wells and leases covered by the instant application and that the other one-half undivided interest is owned by James M. Forgotson, Sr., certificate holder in Docket No. CI71-783 and applicant in Docket No. CI72-766. Applicant states that gas is currently being sold from the subject properties by James M. Forgotson, Sr., pursuant to his FPC Gas Rate Schedule No. 7. Applicant proposes to commence the subject sale on or before June 23, 1972. The related contract provides that deliveries shall commence the later of June 25, 1972, or the date of Commission authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9219 Filed 6-16-72;8:50 am]

[Docket No. E-7734]

MID-CONTINENT AREA POWER POOL AGREEMENT

Notice of Filing for Power Pool Agreement

JUNE 9, 1972.

Notice is hereby given that on May 23, 1972, the Mid-Continent Area Power Pool Agreement (MAPP) tendered for filing a pooling agreement.

Participants in the agreement are:

Interstate Power Co.
Iowa Electric Light and Power Co.
Iowa-Illinois Gas and Electric Co.
Iowa Power and Light Co.
Iowa Public Service Co.
Iowa Southern Utilities Co.
Lake Superior District Power Co.
Minnesota Power & Light Co.
Montana-Dakota Utilities Co.
Northern States Power Co. (Minnesota).
Northwestern Public Service Co.

In addition, the following are also parties to the agreement as participants:

United States of America, Bureau of Reclamation.
Central Iowa Power Cooperative.
Cooperative Power Association.
Corn Belt Power Cooperative.
Dairyland Power Cooperative.
Eastern Iowa Light and Power Cooperative.
Minnkota Power Cooperative, Inc.
Nebraska Public Power District.
Northern Minnesota Power Association.
Omaha Public Power District.
Rural Cooperative Power Association.

Associate Participants are:

Cedar Falls, Iowa.
Delano, Minn.
Glencoe, Minn.
Hibbing, Minn.
Madelia, Minn.
Marshall, Minn.
Redwood Falls, Minn.
Richland Center, Wis.
Northwestern Wisconsin Electric Co.

According to the filing Northern States Power Co. was designated as the filing agent for the pool agreement by the MAPP Management Committee. The parties to this agreement are parties to other agreements which provide for interconnections, poolings and interchange of electric service between themselves and other power suppliers.

No statement of revenue was attached to the filing because the applicant said it was not possible to make an accurate estimate of each party's utilization of available service.

The stated objective of the agreement is to provide reliable and economical electric service to the customers of each of the parties consistent with reasonable utilization of natural resources and effect on environment. The agreement

states an intention that all of the parties shall endeavor to coordinate the installation and operation of generation and transmission facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9146 Filed 6-16-72;8:48 am]

[Docket No. E-7690]

NEW ENGLAND POWER POOL (NEPOOL) AGREEMENT

Rate Schedule Changes; Extension of Time

JUNE 14, 1972.

New England Power Co., Eastern Utilities Associates, Connecticut Light and Power Co., The Hartford Electric Light Co., Holyoke Water Power Co., Holyoke Power and Electric Co., and Central Main Power Co. have filed requests for an extension of time to and including June 19, 1972, within which to answer the "Petition for Late Intervention and Motion to Reject" filed on May 25, 1972, by Bangor Hydro-Electric Corp.[1]

Upon consideration, notice is hereby given that the time is extended to and including June 19, 1972, within which answers may be filed to the motion of Bangor Hydro-Electric Corp.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9220 Filed 6-16-72;8:50 am]

[Docket No. E-7736]

NORTHERN STATES POWER CO.

Notice of Application

JUNE 8, 1972.

Take notice that on June 5, 1972, Northern States Power Co. (applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of 1,902,228 additional shares of its Common Stock par value $5 per share.

Applicant is incorporated under the laws of the State of Minnesota with its principal business office at Minneapolis, Minn., and is engaged in the electric utility business in central and southern Minnesota, southeastern South Dakota, and in the Fargo-Grand Forks and Minot areas of North Dakota.

The Common Stock is to be issued during August, 1972. Applicant proposes a issue and sell the additional Common Stock by (a) offering said shares to the holders of its Common Stock on the basis of one share for each 10 shares of Common Stock held of record on a date and at a price per share to be determined by the applicant (b) offering, at the subscription price to employees and retired employees of applicant and its subsidiaries such of the additional Common Stock as shall not be subscribed for by the holders of subscription warrants and (c) selling at the subscription price, at competitive bidding, such of the above shares of Common Stock as are not subscribed by the holders of the subscription warrants or by employees and retired employees.

The proceeds from the sale of the Common Stock will be added to the general funds of the Company and will be used to prepay part of the outstanding short-term borrowings of the Company incurred in connection with its construction program.

Expenditures during 1972 for the construction program of applicant are estimated at $197 million, of which $180 million is for electric facilities, $7 million for gas facilities, and $10 million for heating, telephone, and general facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 28, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9156 Filed 6-16-72;8:46 am]

[Docket No. CI66-559]

PHILLIPS PETROLEUM CO.

Notice of Petition To Amend and for Waiver of Regulations

JUNE 9, 1972.

Take notice that on May 30, 1972, Phillips Petroleum Co. (Petitioner), Bartlesville, Okla. 74404, filed in Docket No. CI66-559 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act and for waiver of the Commission's regulations under said Act by authorizing the sale of new casinghead gas to Panhandle Eastern Pipe Line Co. (Panhandle) from acreage in the McQuiddy Ranch Area, Hemphill County, Tex., at a rate above the applicable area rate ceiling, all as more fully set forth in the petition to amend and for waiver of Commission's regulations which is on file with the Commission and open to public inspection.

Applicant is presently authorized in subject docket to sell and deliver natural gas to Panhandle from the McQuiddy Ranch Area pursuant to the terms and provisions of a gas purchase and sales agreement dated November 11, 1965, as amended, on file with the Commission as its FPC Gas Rate Schedule No. 418. Applicant states that it has amended this contract by an agreement dated March 27, 1972, to provide for the sale and delivery of new casinghead gas purchased by it from certain leases covered by the agreement dated November 11, 1965, at a higher price.

The new amendment provides that the committed casinghead gas will be subject to all the terms and provisions of the 1965 agreement but for the pricing and tax reimbursement provisions. The price provisions are amended to provide for an initial rate of 30 cents per Mcf adjusted for B.t.u. content, upward and downward, and tax reimbursement provisions are amended to provide for the reimbursement of 87.5 percent of all new, additional or increased taxes.

Applicant estimates an initial upward B.t.u. adjustment of 4.5 cents per Mcf and an initial monthly sales volume of 50,000 Mcf.

Applicant states that it and Panhandle are aware that the 30-cent initial price of natural gas provided for in the March 27, 1972, amendment is greater than the applicable area rate ceiling[1] allowed by the Commission and, therefore, requests waiver of § 154.106 (c) of the Commission's regulations to allow it to charge the initial rate of 30 cents per Mcf.

Applicant contends that the 30-cent rate is the minimum required to cover its purchase, gathering, and compression costs in order to acquire these reserves for delivery in interstate commerce; and furthermore, the price under the November 11, 1965, contract would not allow it to compete for new casinghead gas in the subject area in view of the higher prices offered by either interstate or intrastate purchasers.

Any person desiring to be heard or to make any protest with reference to said petition to amend and for waiver should on or before July 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or

[1] Notice of Rate Schedule Changes was published on Feb. 10, 1972 (37 F.R. 3008), and Notice of Extension of Time was published on Mar. 3, 1972 (37 F.R. 4475).

1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9147 Filed 6-16-72;8:48 am]

[Docket No. CP72-266]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

JUNE 8, 1972.

Take notice that on May 22, 1972, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, TX 77001, filed in Docket No. CP72-266 a budget-type application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing August 12, 1972, and the operation of certain natural gas facilities to enable Applicant to take into its pipeline system supplies of natural gas which will be purchased from producers in the general area of its existing pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed $7 million with no single offshore project cost in excess of $1,750,000, and no single onshore project costing in excess of $1 million. Applicant states that the proposed facilities will be financed initially from temporary bank loans and company funds, with permanent financing to be arranged as part of an overall financing program.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9157 Filed 6-16-72;8:48 am]

[Docket No. RP72-133]

UNITED GAS PIPE LINE CO.

Notice of Proposed Purchased Gas Adjustment Clause

JUNE 9, 1972.

Take notice that on May 30, 1972, United Gas Pipe Line Co. (United) filed a proposed purchased gas adjustment clause. United requests that the Commission waive the notice requirements of § 154.22 of the regulations to permit the purchased gas adjustment clause to become effective June 1, 1972. United states that waiver of such requirements is necessary in order to permit United to begin to accumulate increases in its cost of gas as of June 1, 1972, subject to later recovery as a surcharge adjustment, as provided by § 19.7 et seq. of the proposed PGA clause.

Copies of United's filing were served on each of United's jurisdictional customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9148 Filed 6-16-72;8:48 am]

[Docket No. CP72-12]

WESTERN GAS CORP.

Notice of Petition To Amend

JUNE 9, 1972.

Take notice that on June 5, 1972, Western Gas Corp. (petitioner), Post Office Box 392, Longview, TX 75601, filed in Docket No. CP72-12 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70) in said docket on August 17, 1971 (46 FPC_____), as amended January 6, 1972 (46 FPC_____), by authorizing petitioner to continue the sale of natural gas for an additional year, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner is authorized in the subject docket to sell natural gas to Texas Eastern Transmission Corp. in Gregg County, Tex., for 1 year from August 17, 1971, at the rate of 35 cents per Mcf at 14.65 p.s.i.a. Petitioner proposes to sell approximately 20,000 Mcf of natural gas per day for an additional year commencing August 18, 1972.

Petitioner requests that the time for filing protests and interventions be fixed at not more than 10 days after issuance of this notice. However, inasmuch as the additional sales would not commence until August 18, 1972, it does not appear reasonable and consistent with the public interest in this case to prescribe a period of time for the filing of protests and petitions to intervene other than that required by § 1.19(b) of the Commission's rules of practice and procedure (18 CFR 1.19(b)). Therefore, any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-9149 Filed 6-16-72;8:48 am]

[1] Area ceiling rate established by Opinion No. 86 (Area Rate Proceeding, et al. (Hugoton-Anadarko Area), Docket Nos. AR64-1, et al.).

FEDERAL RESERVE SYSTEM

FIRST ALABAMA BANCSHARES, INC.

Acquisition of Bank

First Alabama Bancshares, Inc., Birmingham, Ala., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire not less than 80 percent of the voting shares of Dothan Bank & Trust Co., Dothan, Ala. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 5, 1972.

Board of Governors of the Federal Reserve System, June 13, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-9162 Filed 6-16-72;8:47 am]

FIRST FINANCIAL CORP.

Acquisition of Bank

First Financial Corp., Tampa, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire not less than 57.967 percent of the voting shares of Venice-Nokomis Bank and Trust Co., Venice, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 3, 1972.

Board of Governors of the Federal Reserve System, June 12, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-9163 Filed 6-16-72;8:47 am]

JACOBUS CO. AND INLAND FINANCIAL CORP.

Order Approving Acquisition of Bank

The Jacobus Co. (Jacobus) and its majority owned subsidiary Inland Financial Corp. (Inland), both of Milwaukee, Wis., bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 56.3 percent or more of the voting shares of Heritage Bank of Milwaukee, Milwaukee, Wis. (Bank). The acquisition will be made by Inland and as a result Jacobus will indirectly acquire voting shares of Bank.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicants control two banks with aggregate deposits of approximately $46 million, representing 0.5 percent of the deposits in commercial banks in Wisconsin.[1] Acquisition of Bank (deposits of $23 million) would increase Applicants' percentage share of deposits in the State by only 0.2 percentage points and would not result in a significant increase in concentration of banking resources in Wisconsin.

Both of applicants' banking subsidiaries are located in the Milwaukee area. However, there is little existing competition between these subsidiaries and Bank, and there is little likelihood of substantial future competition developing between Bank and applicants' subsidiaries due to the large number of intervening banks and Wisconsin's branching laws. Even after the acquisition of Bank, applicants would control less than 2 percent of area deposits and would be the eighth largest banking organization in the Milwaukee area. Competitive consequences of the transaction are considered by the Board to be consistent with approval of the applications.

Considerations relating to the financial condition, managerial resources and prospects of applicants, their subsidiary banks, and Bank are generally satisfactory and consistent with approval of the applications. Considerations relating to the convenience and needs of the community to be served also are consistent with approval of the applications.

As noted in the Board's order dated February 25, 1972 (1972 Federal Reserve Bulletin 306), approving Applicants' acquisition of the voting shares of Heritage Bank-Mayfair, Wauwatosa, Wis., Jacobus has filed a declaration, pursuant to section 4(c)(12) of the Bank Holding Company Act, that it will cease to be a bank holding company by January 1, 1981. In addition, as the Board stated in the earlier order, Jacobus has committed itself to divest itself of its interest in Inland within 90 days of the passage of enabling legislation permitting distribution of Inland's shares to Jacobus shareholders on a tax free basis.

On the basis of the record and in view of the aforesaid commitment, the applications are approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[2] effective June 12, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-9160 Filed 6-16-72;8:46 am]

[1] Banking data are as of June 30, 1971, and reflect holding company formations and acquisitions approved by the Board through May 31, 1972.

NEW JERSEY NATIONAL CORP.

Acquisition of Bank

New Jersey National Corp., Trenton, N.J., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of New Jersey National Bank of Princeton, Princeton, N.J., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 6, 1972.

Board of Governors of the Federal Reserve System, June 13, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-9161 Filed 6-16-72;8:46 am]

UNITED BANKS OF COLORADO, INC.

Order Approving Acquisition of Bank

United Banks of Colorado, Inc., Denver, Colo., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of The Montrose National Bank, Montrose, Colo. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none have been timely received. The Board has considered the application in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant owns 11 banks controlling aggregate deposits of about $692 million and is the second largest banking organization in Colorado, controlling 15 percent of the deposits in commercial

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, Sheehan and Bucher. Absent and not voting: Governor Daane.

banks in the State.[1] Acquisition of Bank (approximately $7 million in deposits) by Applicant would increase its percentage share of deposits by less than two-tenths of 1 percentage point, would not change Applicant's ranking among banking organizations in Colorado, and would not result in a significant increase in the concentration of banking resources in the State.

There is no meaningful existing competition between Bank and any of applicant's banking subsidiaries. The Rocky Mountains separate Montrose from 10 of applicant's 11 subsidiaries, and serve as an effective barrier to the development of any substantial future competition between Bank and these subsidiaries. Applicant's only subsidiary located on the same side of the Rocky Mountains as Montrose is over 60 miles away and, due to the existence of intervening banks and Colorado's branching laws, there is little likelihood that substantial competition will develop between it and Bank. The Board concludes that competitive considerations are consistent with approval of the application.

Applicant proposes to raise equity capital in the near future, and considerations relating to the financial conditions, managerial resources, and prospects of applicant, its subsidiary banks, and Bank are satisfactory and consistent with approval of the application. Considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the acquisition since affiliation with applicant will enable Bank to pursue an expansionary policy likely to be needed for the accommodation of the anticipated increase in economic activity in the Montrose area. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[2] effective June 12, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-9164 Filed 6-16-72;8:47 am]

UNITED MISSOURI BANCSHARES, INC.

Acquisition of Bank

United Missouri Bancshares, Inc., Kansas City, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Wornall Bank, Kansas City, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 3, 1972.

Board of Governors of the Federal Reserve System, June 12, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-9165 Filed 6-16-72;8:47 am]

[1] Banking data are as of June 30, 1971, and reflect holding company formations and acquisitions approved by the Board through May 31, 1972.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, Sheehan and Bucher. Absent and not voting: Governor Daane.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

EMERGENCY DELIVERY OF COLORADO RIVER WATER TO TIJUANA, BAJA CALIFORNIA, MEXICO, VIA FACILITIES IN CALIFORNIA

Notice of Completion and Availability of Environmental Statement

Pursuant to the National Environmental Policy Act of 1969, notice is hereby given that this agency has completed a final statement which discusses environmental considerations relating to "Emergency Delivery of Colorado River Water to Tijuana, Baja California, Mexico, via Facilities in California." A copy of the final statement, along with copies of comments received from other agencies and interested groups, is being placed in the Office of the Country Director for Mexico, Room 3906-A, Department of State, 21st Street and Virginia Avenue NW., Washington, DC, in the office of the Resident Engineer, U.S. Section, International Boundary and Water Commission, 403 Custom and Court House, 305 West F Street, San Diego, CA 92101, and in the office of the U.S. Section, Chief of Planning and Reports, 809 Southwest Center, El Paso, TX. The environmental analysis statement was prepared in connection with the proposed emergency delivery, for a period not to exceed 5 years, of Colorado River water to Tijuana, Baja California, via conveyance facilities in California.

Copies of the final statement, dated June 12, 1972, along with copies of comments received from other agencies and interested groups, can be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Va. 22151.

Dated at El Paso, Tex., this 12th day of June 1972.

FRANK FULLERTON,
Special Legal Assistant.

[FR Doc.72-9181 Filed 6-16-72;8:48 am]

OVERSEAS PRIVATE INVESTMENT CORPORATION

[DL/B (72) 15]

HERBERT SALZMAN ET AL.

Redelegation of Authority

Redelegation of Authority from the President, Overseas Private Investment Corporation, regarding exercise of authority to make original classification of National Security information or material as Confidential or Secret pursuant to section 2B of Executive Order No. 11652.

1. Pursuant to the authority delegated to me by section 2B of Executive Order No. 11652 I hereby redelegate to the below-named individuals the authority to make original classification of National Security information or material as Confidential or Secret.

2. This redelegation is effective June 1, 1972, and supersedes all former delegations of authority or practices relating to National Security information or material. The authority herein delegated may not be further redelegated.

Herbert Salzman, Executive Vice President.
Marshall T. Mays, General Counsel.
Rutherford Poats, Vice President for Development.
Richard Whitney, Vice President for Financing.
Joseph H. Price, Vice President for Insurance.
William A. Pistell, Treasurer.

Dated: May 31, 1972.

BRADFORD MILLS,
President.

[FR Doc.72-9186 Filed 6-16-72;8:49 am]

SECURITIES AND EXCHANGE COMMISSION

[File 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10-cent par value, of Continental Vending Machine Corp., and the 6-percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period June 14, 1972, through June 23, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-9174 Filed 6-16-72;8:47 am]

[File No. 500-1]

INTER-ISLAND MORTGAGEE CORP.

Order Suspending Trading

JUNE 13, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, of Inter-Island Mortgagee Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from June 14, 1972, through June 23, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-9175 Filed 6-16-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 14, 1972.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42450—*Barley and oats, feed grade from points in Montana.* Filed by North Pacific Coast Freight Bureau, agent (No. 72-1), for interested rail carriers. Rates on barley and oats, feed grade, in carloads, as described in the application, from points in Montana, to specified points in Washington and Oregon.

Tariff—Supplement 2 to North Pacific Coast Freight Bureau, agent, tariff ICC 1199. Rates are published to become effective on July 10, 1972.

FSA No. 42451—*Phosphatic fertilizer solution from Kimberly, British Columbia, Canada.* Filed by Western Trunk Line Committee, Agent (No. A-2667), for interested rail carriers. Rates on phosphatic fertilizer solution, in tank carloads, as described in the application, from Kimberly, British Columbia, Canada, to points in western trunk-line (including Illinois) territory and Kentucky.

Grounds for relief—Market competition, modified short-line distance formula and grouping.

Tariff—Canadian Pacific Railway Co. tariff ICC W.1091. Rates are published to become effective on July 17, 1972.

FSA No. 42452—*General commodities between ports in Japan and Korea and rail stations on the U.S. Atlantic and Gulf Seaboard.* Filed by Phoenix Container Liners, Ltd. (No. 1), for itself and interested rail carriers. Rates on general commodities, between ports in Japan and Korea, on the one hand, and rail stations on the U.S. Atlantic and Gulf Seaboard, on the other.

Grounds for relief—Water competition.

Tariffs—Rates as to which relief is requested, are to be published, filed, and become effective as soon as the following tariffs are compiled and completed: Phoenix Container Liners, Ltd., tariffs Nos. 1 and 2, ICC Nos. 1 and 2.

FSA No. 42453—*General commodities between ports in Japan and Peoples Republic of China and rail stations on the U.S. Atlantic and Gulf Seaboard.* Filed by Japan Line, Ltd. (No. 1), for itself and interested rail carriers. Rates on general commodities, between ports in Japan and Peoples Republic of China, on the one hand, and rail stations on the U.S. Atlantic and Gulf Seaboard, on the other.

Grounds for relief—Water competition.

Tariffs—Rates as to which relief is requested, are to be published, filed, and become effective as soon as the following tariffs are compiled and completed: Japan Line, Ltd., tariffs Nos. 1 and 2, ICC Nos. 1 and 2.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-9191 Filed 6-16-72;8:49 am]

[Notice 77]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 14, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-73785. By application filed June 9, 1972. DESERT COASTAL TRANSPORT, INC., Post Office Box 760, Vacaville, CA 95688, seeks temporary authority to lease the operating rights of ARIZONA-WESTERN EXPRESS, INC., Post Office Box 4716, Yuma, AZ 85364, under section 210a(b). The transfer to DESERT COASTAL TRANSPORT, INC., of the operating rights of ARIZONA-WESTERN EXPRESS, INC., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-9190 Filed 6-16-72;8:49 am]

CUMULATIVE LIST OF PARTS AFFECTED—JUNE

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during June.

3 CFR

Page

PROCLAMATIONS:

3548 (see Proc. 4138) 11227
3558 (see Proc. 4138) 11227
3562 (see Proc. 4138) 11227
3597 (see Proc. 4138) 11227
3709 (see Proc. 4138) 11227
3790 (see Proc. 4138) 11227
3822 (see Proc. 4138) 11227
3856 (see Proc. 4138) 11227
3870 (see Proc. 4138) 11227
3884 (see Proc. 4138) 11227
4026 (see Proc. 4138) 11227
4138 11227
4139 11555

EXECUTIVE ORDERS:

8684 (amended by EO 11673) 11457
11007 (superseded by EO 11671) 11307
11671 11307
11672 11455
11673 11457

5 CFR

213 10913, 11313, 11557, 11769, 11965
300 11965
330 11965
550 12035
772 10914

6 CFR

105 10939
300 10942, 10943, 11173, 11233, 11472, 11870
301 10944, 11233, 11473
305 11472
401 11669

PROPOSED RULES:

300 11352

7 CFR

6 11234
51 11313
52 11170
68 12122
220 12035
301 11313
711 11465
722 11965
728 11234
760 11670
905 11966
907 11051, 11170
908 11051, 11465, 11871
910 11171, 11314, 11673, 11717, 11871, 12035
911 11171, 11717, 11966, 12036
915 11314, 11465, 11966
917 10914, 10915
923 11171, 11967
944 11467
946 10915
966 10918
1421 11469
1424 11967
1427 11717, 11967
1464 11172
1701 11469
1822 11052
1823 12036

7 CFR—Continued

Page

PROPOSED RULES:

Ch. I 11067
29 11179
46 11586
52 11067
54 11475
55 11475
56 11475
58 11476
70 11475
911 10956
915 10957
921 11586, 11729
923 10957
930 11339
999 11339, 11977
1065 11482
1071 11587
1073 11587
1097 11587
1102 11587
1106 11587, 11780
1108 11587
1120 11587
1126 11587
1127 11587
1128 11587
1129 11587
1130 11587
1132 11587
1138 11587
1701 11185, 11780
1822 11070
1890s 12068

8 CFR

103 11470
205 11470
212 11052
235 11470
242 11470
246 11471
247 11471
280 11471
292 11471

9 CFR

51 11855
76 11053, 11315, 11673, 11770, 11967
78 11471, 11855
82 11168, 11674
331 11968

10 CFR

2 11871
50 11871

PROPOSED RULES:

55 11785

12 CFR

225 11316, 11557, 11771
543 11053
545 11054, 11721
550 11557
566 11557
571 11054
600 11408

12 CFR—Continued

Page

601 11409
602 11413
611 11415
612 11417
613 11421
614 11423
615 11434
616 11439
617 11440
618 11442
619 11446
701 11234
715 11235
741 11317

PROPOSED RULES:

220 11734
545 11191
546 11191
563 11191
710 11351

13 CFR

120 11173
121 11173
302 11173

14 CFR

39 11155, 11235, 11315, 11462, 11558, 11771, 11856, 11857, 12061
71 10919, 11155, 11156, 11316, 11558, 11559, 11674, 11721, 11858, 11859, 11968, 11969, 12062
73 10919
75 10919, 11859
97 11054, 11462, 11969
103 12062
152 11014
207 11156, 11235
208 11157, 11238
212 11157, 11239
214 11157, 11240
241 11157
249 11158, 11241
302 10920
372 11159
385 11464
389 11166

PROPOSED RULES:

39 11185
71 10957, 10959, 11185–11188, 11262, 11343, 11590–11592, 11684, 11897, 11898, 11978, 12068
75 11189
207 11190
208 11190
212 11190
214 11190
241 11685
288 11344
302 11485
372 11190
399 11344

15 CFR

500 11530
610 11465

15 CFR—Continued

Page

PROPOSED RULES:

7 ... 11896
908 ... 11679

16 CFR

13 ... 10920–10930, 11055, 11056

PROPOSED RULES:

600 ... 11903, 12068

17 CFR

211 ... 11559
230 ... 10931
231 ... 11559
239 ... 10931
240 ... 11970
241 ... 11559
251 ... 11559
271 ... 11559

PROPOSED RULES:

240 ... 10960, 11687, 11904
270 ... 11486

18 CFR

35 ... 12063
141 ... 11860
154 ... 12063

PROPOSED RULES:

2 ... 11787
104 ... 11788
105 ... 11788
141 ... 11192, 11788
204 ... 11788
205 ... 11788
260 ... 11192, 11788

19 CFR

1 ... 11317, 11560
8 ... 11167
10 ... 11318
24 ... 11167
153 ... 11560, 11772, 11773

PROPOSED RULES:

153 ... 11475

20 CFR

404 ... 11721

21 CFR

19 ... 10931, 11722, 12064
121 ... 11167, 11241, 12065
130 ... 12066
135 ... 11241, 11723, 11773
135a ... 11241, 11723
135b ... 11723, 11773
135c ... 11723, 11773, 11774, 12066
141 ... 11675
141a ... 10931, 12066
146 ... 11675
146a ... 10931, 12066
148e ... 11676
148h ... 11675
148i ... 12067
281 ... 11464

PROPOSED RULES:

36 ... 10957
121 ... 11255
149b ... 11729
164 ... 11729

22 CFR

22 ... 11459
41 ... 11057
50 ... 11459

22 CFR—Continued

Page

53 ... 11459
301 ... 11058
503 ... 11861

23 CFR

PROPOSED RULES:

1 ... 11730

24 CFR

15 ... 11242
275 ... 11168
1914 ... 11169, 11561, 11975
1915 ... 11170, 11562, 11976

PROPOSED RULES:

201 ... 11485

25 CFR

43h ... 11243
221 ... 10932

26 CFR

13 ... 10932

PROPOSED RULES:

1 ... 10946
3 ... 11877
201 ... 11776

28 CFR

0 ... 11317, 11724

29 CFR

5a ... 11971
780 ... 12084
1910 ... 11318
1918 ... 11058

PROPOSED RULES:

1910 ... 11255, 11340, 11901
1926 ... 11340

30 CFR

100 ... 11459, 11861
231 ... 11040

PROPOSED RULES:

58 ... 11977
75 ... 11777, 11779
82 ... 11338

31 CFR

10 ... 11676
344 ... 10932

32 CFR

255 ... 11562
1631 ... 11058
1710 ... 11564

32A CFR

OIA (Ch. X):

OI Reg. 1 ... 10933, 11774

33 CFR

117 ... 11566, 11567, 11972
207 ... 11058

PROPOSED RULES:

92 ... 11342
110 ... 11977

36 CFR

6 ... 11972
7 ... 11066
251 ... 10937

39 CFR

Page

PROPOSED RULES:

144 ... 11904

40 CFR

5 ... 11059
30 ... 11650
35 ... 11650
180 ... 11167, 11243, 11724, 11725

PROPOSED RULES:

5 ... 11072
52 ... 11826
80 ... 11786

41 CFR

3–56 ... 11567
9–1 ... 11322
Ch. 12B ... 11972
101–17 ... 11323
101–18 ... 11326
101–20 ... 11327
101–32 ... 11725
114–25 ... 11460

PROPOSED RULES:

29–12 ... 11189
101–26 ... 10959
101–33 ... 10959
101–43 ... 10959

42 CFR

51a ... 11577
73 ... 10937, 11728

43 CFR

4 ... 11460

PUBLIC LAND ORDERS:

606 (see PLO 5215) ... 11677
836 (amended by PLO 5215) ... 11677
5173 (amended by PLO 5213) ... 11244
5178 (amended by PLO 5214) ... 11244
5191 (see PLO 5213) ... 11244
5213 ... 11244
5214 ... 11244
5215 ... 11677

PROPOSED RULES:

2 ... 11780
2800 ... 11255
2870 ... 11255

45 CFR

83 ... 10938, 11577
205 ... 11059
1201 ... 11060

PROPOSED RULES:

233 ... 11977
248 ... 11785, 11977
909 ... 11257

46 CFR

30 ... 11774
151 ... 11774
160 ... 11462, 11774
272 ... 11577
309 ... 11578

PROPOSED RULES:

391 ... 11886

47 CFR

Page

0 12067
2 11863
73 ..... 11538, 11581, 11584, 11863, 11864
81 ..... 11245, 11328
83 ..... 11245, 11774
87 11863
89 ..... 11585, 11869
91 ..... 11335, 11585, 11869
93 ..... 11585, 11869
201 11335

PROPOSED RULES:

1 11592
2 11980
18 11980
21 11980
73 ..... 11787, 11980
74 ..... 11593, 11980

47 CFR—Continued

Page

PROPOSED RULES—Continued

89 11980
91 ..... 10959, 11980
93 11980

49 CFR

71 11972
393 ..... 11336, 11677
571 ..... 10938, 11775, 11973
1033 ..... 11066, 11336

PROPOSED RULES:

171 11685
173 11898
391 11781
392 11781
393 11781
394 11781
395 ..... 11684, 11781

49 CFR—Continued

Page

PROPOSED RULES—Continued

396 11781
571 11979
574 11979
1201 11076

50 CFR

28 ..... 11869, 11974
32 11585
33 ..... 11066, 11974
35 12067

PROPOSED RULES:

261 11683
263 11683
266 11683
276 11683
277 11683
279 11683

LIST OF FEDERAL REGISTER PAGES AND DATES—JUNE

Pages	*Date*
10907–11045	June 1
11047–11147	2
11149–11222	3
11223–11299	6
11301–11447	7
11449–11548	8
11549–11663	9
11665–11710	10
11711–11761	13
11763–11848	14
11849–11958	15
11959–12029	16
12031–12128	17

federal register

SATURDAY, JUNE 17, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 118

PART II

DEPARTMENT OF LABOR

Wage and Hour Division

■

FAIR LABOR STANDARDS ACT

■

Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

Part 780 of Title 29 of the Code of Federal Regulations is hereby revised as set forth below in order to adapt it to the changes made by the Fair Labor Standards Amendments of 1966 (80 Stat. 830) in the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and in order to include such new and additional interpretations of the law as amended and such modifications of prior interpretations as are deemed necessary to conform the text of this part to the present provisions of the act, as amended, and to set forth therein more fully the principles by which the Secretary and the Administrator are guided in interpreting and applying these provisions in the light of their legislative history and the pertinent judicial decisions and administrative interpretations and opinions rendered since this part was last revised.

The administrative procedure provisions of 5 U.S.C. 553 which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these are interpretative rules. I do not believe such procedures will serve a useful purpose here.

Accordingly, this amendment revising Part 780 shall become effective immediately.

The revised 29 CFR Part 780 reads as follows:

Subpart A—Introductory

Subpart B—General Scope of Agriculture

Subpart C—Agriculture as It Relates to Specific Situations

AUTHORITY: The provisions of this Part 780 issued under secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

Subpart A—Introductory

§ 780.0 Purpose of interpretative bulletins in this part.

It is the purpose of the interpretative bulletins in this part to provide an official statement of the views of the Department of Labor with respect to the application and meaning of the provisions of the Fair Labor Standards Act of 1938, as amended, which exempt certain employees from the minimum wage or overtime pay requirements, or both, when employed in agriculture or in certain related activities or in certain operations with respect to agricultural or horticultural commodities.

§ 780.1 General scope of the Act.

The Fair Labor Standards Act is a Federal statute of general application which establishes minimum wage, overtime pay, equal pay, and child labor requirements that apply as provided in the Act. These requirements are applicable, except where exemptions are provided, to employees in those workweeks when they are engaged in interstate or foreign commerce or in the production of goods for such commerce or are employed in enterprises so engaged within the meaning of definitions set forth in the Act. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act, and with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 780.2 Exemptions from Act's requirements.

The Act provides a number of specific exemptions from the general requirements described in § 780.1. Some are exemptions from the overtime provisions only. Others are from the child labor provisions only. Several are exemptions from both the minimum wage and the overtime requirements of the Act. Finally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An employer who claims an exemption under the Act has the burden of showing that it applies (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290). Conditions specified in the language of the Act are "explicit prerequisites to exemption" (Arnold v. Kanowsky, 361 U.S. 388). "The details with which the exemptions in this Act have been made preclude their enlargement by implication" and "no matter how broad the exemption, it is meant to apply only to" the specified activities (Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254). Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come "plainly and unmistakably within their terms and spirit" (Phillips v. Walling, 334 U.S. 490; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Arnold v. Kanowsky, 361 U.S. 388).

§ 780.3 Exemptions discussed in this part.

(a) The specific exemptions which the Act provides for employment in agriculture and in certain operations more or less closely connected with the agricultural industry are discussed in this Part 780. These exemptions differ substantially in their terms, scope, and methods of application. Each of them is therefore separately considered in a subpart of this part which, together with this Subpart A, constitutes the official interpretative bulletin of the Department of Labor with respect to that exemption. Exemptions from minimum wages and overtime pay and the subparts in which they are considered include the section 13(a)(6) exemptions for employees on small farms, family members, local hand harvest laborers, migrant hand harvest workers under 16, and range production employees discussed in Subpart D of this part, and the section 13(a)(14) exemption for agricultural employees processing shade-grown tobacco discussed in Subpart F of this part.

(b) Exemptions from the overtime pay provisions and the subparts in which these exemptions are discussed include the section 13(b)(12) exemption (agriculture and irrigation) discussed in Subpart E of this part, the section 13(b)(13) exemption (agriculture and livestock auction operations) discussed in Subpart G of this part, the section 13(b)(14) exemption (country elevators) discussed in Subpart H of this part, the section 13(b)(15) exemption (cotton ginning and sugar processing) discussed in Subpart I of this part, and the section 13(b)(16) exemption (fruit and vegetable harvest transportation) discussed in Subpart J of this part.

(c) An exemption in section 13(d) of the Act from the minimum wage, overtime pay, and child labor provisions for certain homeworkers making holly and evergreen wreaths is discussed in Subpart K of this part.

§ 780.4 Matters not discussed in this part.

The application of provisions of the Fair Labor Standards Act other than the exemptions referred to in § 780.3 is not considered in this Part 780. Interpretative bulletins published elsewhere in the Code of Federal Regulations deal with such subjects as the general coverage of the Act (Part 776 of this chapter).

and of the child labor provisions (Subpart G of Part 1500 of this title which includes a discussion of the exemption for children employed in agriculture outside of school hours), partial overtime exemptions provided for industries of a seasonal nature under sections 7(c) and 7(d) (Part 526 of this chapter) and for industries with marked seasonal peaks of operations under section 7(d) (Part 526 of this chapter), methods of payment of wages (Part 531 of this chapter), computation and payment of overtime compensation (Part 778 of this chapter), and hours worked (Part 785 of this chapter). Regulations on recordkeeping are contained in Part 516 of this chapter and regulations defining exempt administrative, executive, and professional employees, and outside salesmen are contained in Part 541 of this chapter. Regulations and interpretations on other subjects concerned with the application of the Act are listed in the table of contents to this chapter. Copies of any of these documents may be obtained from any office of the Wage and Hour Division.

§ 780.5 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect.

§ 780.6 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (Mitchell v. Zachry, 362 U.S. 310; Kirschbaum v. Walling, 316 U.S. 517). Court decisions supporting interpretations contained in this bulletin are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 F.R. 3290; Secretary's Order 13–71, May 4, 1971, F.R.; Secretary's Order 15–71, May 4, 1971, F.R.). Interpretative rules under the Act as amended in 1966 are also authorized by section 602 of the Fair Labor Standards Amendments of 1966 (80 Stat. 830), which provides: "On and after the date of the enactment of this Act the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act." As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this bulletin where it appears that they will contribute to a better understanding of the interpretations.

§ 780.7 Reliance on interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (Skidmore v. Swift, 323 U.S. 134.) Some of the interpretations in this part are interpretations of exemption provisions as they appeared in the original Act before amendment in 1949, 1961, and 1966, which have remained unchanged because they are consistent with the amendments. These interpretations may be said to have congressional sanction because "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended. 63 Stat. 920." (Mitchell v. Kentucky Finance Co., 359 U.S. 290; accord, Maneja v. Waialua, 349 U.S. 254.)

§ 780.8 Interpretations made, continued, and superseded by this part.

On and after publication of this Part 780 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as this Part 780. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1966 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequency arise. They do not and cannot refer specifically to every problem which may be met in the consideration of the exemptions discussed. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this bulletin may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, or to any Regional Office of the Division.

§ 780.9 Related exemptions are interpreted together.

The interpretations contained in the several subparts of this Part 780 consider separately a number of exemptions which affect employees who perform activities in or connected with agriculture and its products. These exemptions deal with related subject matter and varying degrees of relationships between them were the subject of consideration in Congress before their enactment. Together they constitute an expression in some detail of existing Federal policy on the lines to be drawn in the industries connected with agriculture and agricultural products between those employees to whom the pay provisions of the Act are to be applied and those whose exclusion in whole or in part from the Act's requirements has been deemed justified. The courts have indicated that these exemptions, because of their relationship to one another, should be construed together insofar as possible so that they form a consistent whole. Consideration of the language and history of a related exemption or exemptions is helpful in ascertaining the intended scope and application of an exemption whose effect might otherwise not be clear (Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254; Bowie v. Gonzales (C.A. 1), 117 F. 2d 11). In the interpretations of the several exemptions discussed in the various subparts of this Part 780, effect has been given to these principles and each exemption has been considered in its relation to others in the group as well as to the combined effect of the group as a whole.

§ 780.10 Workweek standard in applying exemptions.

The workweek is the unit of time to be taken as the standard in determining the applicability of an exemption. An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week. If in any workweek an employee does only exempt work, he is exempt from the wage and hour provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in 1 workweek and not in the next. But the burden of effecting segregation between exempt

and nonexempt work as between particular workweeks is upon the employer.

§ 780.11 Exempt and nonexempt work during the same workweek.

Where an employee in the same workweek performs work which is exempt under one section of the Act and also engages in work to which the Act applies but is not exempt under some other section of the Act, he is not exempt that week, and the wage and hour requirements of the Act are applicable (see Mitchell v. Hunt, 263 F. 2d 913; Mitchell v. Maxfield, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 69, 781; Jordan v. Stark Bros. Nurseries, 45 F. Supp. 769; McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n, 80 F. Supp. 953, affirmed 181 F. 2d 697; Walling v. Peacock Corp., 58 F. Supp. 880–883). On the other hand, an employee who performs exempt activities during a workweek will not loss the exemption by virtue of the fact that he performs other activities outside the scope of the exemption if the other activities are not covered by the Act.

§ 780.12 Work exempt under another section of the Act.

The combination (tacking) of exempt work under one exemption with exempt work under another exemption is permitted. For instance, the overtime pay requirements are not considered applicable to an employee who does work within section 13(b)(12) for only part of a workweek if all of the covered work done by him during the remainder of the workweek is within one or more equivalent exemptions under other provisions of the Act. If the scope of such exemptions is not the same, however, the exemption applicable to the employee is equivalent to that provided by whichever exemption provision is more limited in scope. For instance, an employee who devotes part of a workweek to work within section 13(b)(12) and the remainder to work exempt under section 7(c) must receive the minimum wage and must be paid time and one-half for his overtime work during that week for hours over 10 a day or 50 a week, whichever provides the greater compensation. Each activity is tested separately under the applicable exemption as though it were the sole activity of the employee for the whole workweek in question. The availability of a combination exemption depends on whether the employee meets all the requirements of each exemption which it is sought to combine.

Subpart B—General Scope of Agriculture

INTRODUCTORY

§ 780.100 Scope and significance of interpretative bulletin.

Subpart A of this Part 780, this Subpart B and Subparts C, D, and E of this part together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of sections 3(f), 13(a)(6), and 13(b)(12) of the Fair Labor Standards Act of 1938, as amended. Section 3(f) defines "agriculture" as the term is used in the Act. Section 13(a)(6) provides exemption from the minimum wage and overtime pay provisions of the Act for certain employees employed in "agriculture," as so defined. Section 13(b)(12) provides an overtime exemption for any employee employed in agriculture. As appears more fully in Subpart A of this Part 780, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act.

§ 780.101 Matters discussed in this subpart.

Section 3(f) defines "agriculture" as this term is used in the Act. Those principles and rules which govern the interpretation of the meaning and application of the Act's definition of "agriculture" in section 3(f) and of the terms used in it are set forth in this Subpart B. Included is a discussion of the application of the definition in section 3(f) to the employees of farmers' cooperative associations. In addition, the official interpretations of section 3(f) of the Act and the terms which appear in it are to be taken into consideration in determining the meaning intended by the use of like terms in particular related exemptions which are provided by the Act.

§ 780.102 Pay requirements for agricultural employees.

Section 6(a)(5) of the Act provides that any employee employed in agriculture must be paid at least $1.30 an hour beginning February 1, 1969. However, there are certain exemptions provided in the Act for agricultural workers, as previously mentioned. (See §§ 780.3 and 780.4.)

§ 780.103 "Agriculture" as defined by the Act.

Section 3(f) of the Act defines "agriculture" as follows:

> "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 780.104 How modern specialization affects the scope of agriculture.

The effect of modern specialization on agriculture has been discussed by the U.S. Supreme Court as follows:

> Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural product become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a powerplant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture (see Farmers Reservoir Co. v. McComb, 337 U.S. 755 cf. Maneja v. Waialua, 349 U.S. 254).

§ 780.105 "Primary" and "secondary" agriculture under section 3(f).

(a) Section 3(f) of the Act contains a very comprehensive definition of the term "agriculture." The definition has two distinct branches (see Farmers Reservoir Co. v. McComb, 337 U.S. 755). One has relation to the primary meaning of agriculture; the other gives to the term a somewhat broader secondary meaning for purposes of the Act (NLRB v. Olaa Sugar Co., 242 F. 2d 714).

(b) First, there is the primary meaning. This includes farming in all its branches. Listed as being included "among other things" in the primary meaning are certain specific farming operations such as cultivation and tillage of the soil, dairying the production, cultivation, growing and harvesting of any agricultural or horticultural commodities and the raising of livestock, bees, fur-bearing animals or poultry. If an employee is employed in any of these activities, he is engaged in agriculture regardless of whether he is employed by a farmer or on a farm. (Farmers Reservoir Co. v. McComb, supra; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398.)

(c) Then there is the secondary meaning of the term. The second branch includes operations other than those which fall within the primary meaning of the term. It includes any practices, whether or not they are themselves farming practices, which are performed either by a

farmer or on a farm as an incident to or in conjunction with "such" farming operations (Farmers Reservoir Co. v. McComb, supra; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Maneja v. Waialua, 349 U.S. 254).

(d) Employment not within the scope of either the primary or the secondary meaning of "agriculture" as defined in section 3(f) is not employment in agriculture. In other words, employees not employed in farming or by a farmer or on a farm are not employed in agri- U.S. 254).

§ 780.106 Employment in "primary" agriculture is farming regardless of why or where work is performed.

When an employee is engaged in direct farming operations included in the primary definition of "agriculture," the purpose of the employer in performing the operations is immaterial. For example, where an employer owns a factory and a farm and operates the farm only for experimental purposes in connection with the factory, those employees who devote all their time during a particular workweek to the direct farming operations, such as the growing and harvesting of agricultural commodities, are considered as employed in agriculture. It is also immaterial whether the agricultural or horticultural commodities are grown in enclosed houses, as in greenhouses or mushroom cellars, or in an open field. Similarly, the mere fact that production takes place in a city or on industrial premises, such as in hatcheries, rather than in the country or on premises possessing the normal characteristics of a farm makes no difference (see Jordan v. Stark Brothers Nurseries, 45 F. Supp. 769; Miller Hatcheries v. Boyer, 131 F. 2d 283; Damutz v. Pinchbeck, 158 F. 2d 882).

Farming in All Its Branches

§ 780.107 Scope of the statutory term.

The language "farming in all its branches" includes all activities, whether listed in the definition or not, which constitute farming or a branch thereof under the facts and circumstances.

§ 780.108 Listed activities.

Section 3(f), in defining the practices included as "agriculture" in its statutory secondary meaning, refers to the activities specifically listed in the earlier portion of the definition (the "primary" meaning) as "farming" operations. They may therefore be considered as illustrative of "farming in all its branches" as used in the definition.

§ 780.109 Determination of whether unlisted activities are "farming."

Unlike the specifically enumerated operations, the phrase "farming in all its branches" does not clearly indicate its scope. In determining whether an operation constitutes "farming in all its branches," it may be necessary to consider various circumstances such as the nature and purpose of the operations of the employer, the character of the place where the employee performs his duties, the general types of activities there conducted, and the purpose and function of such activities with respect to the operations carried on by the employer. The determination may involve a consideration of the principles contained in § 780.104. For example, fish farming activities fall within the scope of the meaning of "farming in all its branches" and employers engaged in such operations would be employed in agriculture. On the other hand, so-called "bird dog" operations of the citrus fruit industry consisting of the purchase of fruit unsuitable for packing and of the transportation and sale of the fruit to canning plants do not qualify as "farming" and, consequently, employees engaged in such operations are not employed in agriculture. (See Chapman v. Durkin, 214 F. 2d 360 cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363 cert. denied, 348 U.S. 897.) However, employees gathering the fruit at the groves are considered agricultural workers because they are engaged in harvesting operations. (For exempt transportation, see Subpart J of this part.)

Cultivation and Tillage of the Soil

§ 780.110 Operations included in "cultivation and tillage of the soil."

"Cultivation and tillage of the soil" includes all the operations necessary to prepare a suitable seedbed, eliminate weed growth, and improve the physical condition of the soil. Thus, grading or leveling land or removing rock or other matter to prepare the ground for a proper seedbed or building terraces on farmland to check soil erosion are included. The application of water, fertilizer, or limestone to farmland is also included. (See in this connection §§ 780.128 et seq. Also see Farmers Reservoir Co. v. McComb, 337 U.S. 755.) Other operations such as the commercial production and distribution of fertilizer are not included within the scope of agriculture. (McComb v. Super-A Fertilizer Works, 165 F. 2d 824; Farmers Reservoir Co. v. McComb, 337 U.S. 755.)

Dairying

§ 780.111 "Dairying" as a farming operation.

"Dairying" includes the work of caring for and milking cows or goats. It also includes putting the milk in containers, cooling it, and storing it where done on the farm. The handling of milk and cream at receiving stations is not included. Such operations as separating cream from milk, bottling milk and cream, or making butter and cheese may be considered as "dairying" under some circumstances, or they may be considered practices under the "secondary" meaning of the definition when performed by a farmer or on a farm, if they are not performed on milk produced by other farmers or produced on other farms. (See the discussions in §§780.128 et seq.)

Agricultural or Horticultural Commodities

§ 780.112 General meaning of "agricultural or horticultural commodities."

Section 3(f) of the Act defines as "agriculture" the "production, cultivation, growing, and harvesting" of "agricultural or horticultural commodities," and employees employed in such operations are engaged in agriculture. In general, within the meaning of the Act, "agricultural or horticultural commodities" refers to commodities resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: Grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugar cane, seed, or any other agricultural or horticultural commodity are engaged in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. For example, peat humus or peat moss is not an agricultural commodity. Wirtz v. Ti Ti Peat Humus Co., 373 f(2d) 209 (C.A. 4).

§ 780.113 Seeds, spawn, etc.

Seeds and seedlings of agricultural and horticultural plants are considered "agricultural or horticultural commodities." Thus, since mushrooms and beans are considered "agricultural or horticultural commodities," the spawn of mushrooms and bean sprouts are also so considered and the production, cultivation, growing, and harvesting of mushroom spawn or bean sprouts is "agriculture" within the meaning of section 3(f).

§ 780.114 Wild commodities.

Employees engaged in the gathering or harvesting of wild commodities such as mosses, wild rice, burls and laurel plants, the trapping of wild animals, or the appropriation of minerals and other uncultivated products from the soil are not employed in "the production, cultivation, growing, and harvesting of agricultural or horticultural commodities." However, the fact that plants or other commodities actually cultivated by men are of a species which ordinarily grows wild without being cultivated does not preclude them from being classed as "agricultural or horticultural commodities." Transplanted branches which were cut from plants growing wild in the field or forest are included within the term. Cultivated blueberries are also included.

§ 780.115 Forest products.

Trees grown in forests and the lumber derived therefrom are not "agricultural

or horticultural commodities." Christmas trees, whether wild or planted, are also not so considered. It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.160–780.164 which discuss the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute "agriculture." For a discussion of the exemption in section 13(a)(13) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see Part 788 of this chapter.

§ 780.116 Commodities included by reference to the Agricultural Marketing Act.

(a) Section 3(f) expressly provides that the term "agricultural or horticultural commodities" shall include the commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141–1141j). Section 15(g) of that Act provides: "As used in this act, the term 'agricultural commodity' includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producers of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum resin, as defined in the Naval Stores Act, approved March 3, 1923" (7 U.S.C. 91–99). As defined in the Naval Stores Act, " 'gum spirits of turpentine' means spirits of turpentine made from gum (oleoresin) from a living tree" and " 'gum rosin' means rosin remaining after the distillation of gum spirits of turpentine." The production of these commodities is therefore within the definition of "agriculture."

(b) Since the only oleoresin included within section 15(g) of the Agricultural Marketing Act is that derived from a living tree, the production of oleoresin from stumps or any sources other than living trees is not within section 3(f). If turpentine or rosin is produced in any manner other than the processing of crude gum from living trees, as by digging up pine stumps and grinding them or by distilling the turpentine with steam from the oleoresin within or extracted from the wood, the production of the turpentine or rosin is not included in section 3(f).

(c) Similarly, the production of gum turpentine or gum rosin is not included when these are produced by anyone other than the original producer of the crude gum from which they are derived Thus, if a producer of turpentine or rosin from oleoresin from living trees makes such products not only from oleoresin produced by him but also from oleoresin delivered to him by others, he is not producing a product defined as an agricultural commodity and employees engaged in his production operations are not agricultural employees. (For an explanation of the inclusion of the word "production" in section 3(f), see § 780.117(b).) It is to be noted, however, that the production of gum turpentine and gum rosin from crude gum (oleoresin) derived from a living tree is included within section 3(f) when performed at a central still for and on account of the producer of the crude gum. But where central stills buy the crude gum they process and are the owners of the gum turpentine and gum rosin that are derived from such crude gum and which they market for their own account, the production of such gum turpentine and gum rosin is not within section 3(f).

"Production, Cultivation, Growing, and Harvesting" of Commodities

§ 780.117 "Production, cultivation, growing."

(a) The words "production, cultivation, growing" describe actual raising operations which are normally intended or expected to produce specific agricultural or horticultural commodities. The raising of such commodities is included even though done for purely experimental purposes. The "growing" may take place in growing media other than soil as in the case of hydroponics. The words do not include operations undertaken or conducted for purposes not concerned with obtaining any specific agricultural or horticultural commodity. Thus operations which are merely preliminary, preparatory or incidental to the operations whereby such commodities are actually produced are not within the terms "production, cultivation, growing". For example, employees of a processor of vegetables who are engaged in buying vegetable plants and distributing them to farmers with whom their employer has acreage contracts are not engaged in the "production, cultivation, growing" of agricultural or horticultural commodities. The furnishing of mushroom spawn by a canner of mushrooms to growers who supply the canner with mushrooms grown from such spawn does not constitute the "growing" of mushrooms. Similarly, employees of the employer who is engaged in servicing insecticide sprayers in the farmer's orchard and employees engaged in such operations as the testing of soil or genetics research are not included within the terms. (However, see §§ 780.128, et seq., for possible exemption on other grounds.) The word "production," used in conjunction with "cultivation, growing, and harvesting," refers, in its natural and unstrained meaning, to what is derived and produced from the soil, such as any farm produce. Thus, "production" as used in section 3(f) does not refer to such operations as the grinding and processing of sugarcane, the milling of wheat into flour, or the making of cider from apples. These operations are clearly the processing of the agricultural commodities and not the production of them (Bowie v. Gonzalez, 117 F. 2d 11).

(b) The word "production" was added to the definition of "agriculture" in order to take care of a special situation—the production of turpentine and gum rosins by a process involving the tapping of living trees. (See S. Rep. No. 230, 71st Cong., second sess. (1930); H.R. Rep. No. 2738, 75th Cong., third sess. p. 29 (1938).) To insure the inclusion of this process within the definition, the word "production" was added to section 3(f) in conjunction with the words "including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended" (Bowie v. Gonzalez, 117 F. 2d 11). It is clear, therefore, that "production" is not used in section 3(f) in the artificial and special sense in which it is defined in section 3(j). It does not exempt an employee merely because he is engaged in a closely related process or occupation directly essential to the production of agricultural or horticultural commodities. To so construe the term would render unnecessary the remainder of what Congress clearly intended to be a very elaborate and comprehensive definition of "agriculture." The legislative history of this part of the definition was considered by the U.S. Supreme Court in reaching these conclusions in Farmers Reservoir Co. v. McComb, 337 U.S. 755.

§ 780.118 "Harvesting".

(a) The term "harvesting" as used in section 3(f) includes all operations customarily performed in connection with the removal of the crops by the farmer from their growing position (Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; NLRB v. Olaa Sugar Co., 242 F. 2d 714). Examples include the cutting of grain, the picking of fruit, the stripping of bluegrass seed, and the digging up of shrubs and trees grown in a nursery. Employees engaged on a plantation in gathering sugarcane as soon as it has been cut, loading it, and transporting the cane to a concentration point on the farm are engaged in "harvesting" (Vives v. Serralles, 145 F. 2d 552).

(b) The combining of grain is exempt either as harvesting or as a practice performed on a farm in conjunction with or as an incident to farming operations. (See in this connection Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398.) "Harvesting" does not extend to operations subsequent to and unconnected with the actual process whereby agricultural or horticultural commodities are severed from their attachment to the soil or otherwise reduced to possession. For example, the processing of sugarcane into raw sugar (Bowie v. Gonzalez, 117 F. 2d 11, and see Maneja v. Waialua, 349 U.S. 254), or the vining of peas are not included. For a further discussion on vining employees, see § 780.139. While transportation to a concentration point on the farm may be included, "harvesting" never extends to transportation or other operations off the farm. Off-the-farm transportation can only be "agriculture" when performed by the farmer as an incident to his farming operations (Chapman v. Durkin, 214 F. 2d 360 cert.

denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363 cert. denied 348 U.S. 897). For further discussion of this point, see §§ 780.144–780.147; §§ 780.152–780.157.

RAISING OF LIVESTOCK, BEES, FUR-BEARING ANIMALS, OR POULTRY

§ 780.119 Employment in the specified operations generally.

Employees are employed in the raising of livestock, bees, fur-bearing animals or poultry only if their operations relate to animals of the type named and constitute the "raising" of such animals. If these two requirements are met, it makes no difference for what purpose the animals are raised or where the operations are performed. For example, the fact that cattle are raised to obtain serum or virus or that chicks are hatched in a commercial hatchery does not affect the status of the operations under section 3(f).

§ 780.120 Raising of "livestock."

The meaning of the term "livestock" as used in section 3(f) is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. That Congress did not use this term in its generic sense is supported by the specific enumeration of activities, such as the raising of fur-bearing animals, which would be included in the generic meaning of the word. The term includes the following animals, among others: cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research purposes (Mitchell v. Maxfield, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 68, 781). Fish are not "livestock" (Dunkly v. Erich, 158 F. 2d 1), but employees employed in propagating or farming of fish may qualify for exemption under section 13(a)(6) or 13(b)(12) of the Act as stated in § 780.109 as well as under section 13(a)(5), as explained in Part 784 of this chapter.

§ 780.121 What constitutes "raising" of livestock.

The term "raising" employed with reference to livestock in section 3(f) includes such operations as the breeding, fattening, feeding, and general care of livestock. Thus, employees exclusively engaged in feeding and fattening livestock in stock pens where the livestock remains for a substantial period of time are engaged in the "raising" of livestock. The fact that the livestock is purchased to be fattened and is not bred on the premises does not characterize the fattening as something other than the "raising" of livestock. The feeding and care of livestock does not necessarily or under all circumstances constitute the "raising" of such livestock, however. It is clear, for example, that animals are not being "raised" in the pens of stockyards or the corrals of meat packing plants where they are confined for a period of a few days while en route to slaughter or pending their sale or shipment. Therefore, employees employed in these places in feeding and caring for the constantly changing group of animals cannot reasonably be regarded as "raising" livestock (NLRB v. Tovrea Packing Co., 111 F. 2d 626, cert. denied 311 U.S. 668; Walling v. Friend, 156 F. 2d 429). Employees of a cattle raisers' association engaged in the publication of a magazine about cattle, the detection of cattle thefts, the location of stolen cattle, and apprehension of cattle thieves are not employed in raising livestock and are not engaged in agriculture.

§ 780.122 Activities relating to race horses.

Employees engaged in the breeding, raising, and training of horses on farms for racing purposes are considered agricultural employees. Included are such employees as grooms, attendants, exercise boys, and watchmen employed at the breeding or training farm. On the other hand, employees engaged in the racing, training, and care of horses and other activities performed off the farm in connection with commercial racing are not employed in agriculture. For this purpose, a training track at a racetrack is not a farm. Where a farmer is engaged in both the raising and commercial racing of race horses, the activities performed off the farm by his employees as an incident to racing, such as the training and care of the horses, are not practices performed by the farmer in his capacity as a farmer or breeder as an incident to his raising operations. Employees engaged in the feeding, care, and training of horses which have been used in commercial racing and returned to a breeding or training farm for such care pending entry in subsequent races are employed in agriculture.

§ 780.123 Raising of bees.

The term "raising of * * * bees" refers to all of those activities customarily performed in connection with the handling and keeping of bees, including the treatment of disease and the raising of queens

§ 780.124 Raising of fur-bearing animals.

(a) The term "fur-bearing animals" has reference to animals which bear fur of marketable value and includes, among other animals, rabbits, silver foxes, minks, squirrels, and muskrats. Animals whose fur lacks marketable value, such as albino and other rats, mice, guinea pigs, and hamsters, are not "fur-bearing animals" which within the meaning of section 3(f).

(b) The term "raising" of fur-bearing animals includes all those activities customarily performed in connection with breeding, feeding and caring for fur-bearing animals, including the treatment of disease. Such treatment of disease has reference only to disease of the animals being bred and does not refer to the use of such animals or their fur in experimenting with disease or treating diseases in others. The fact that muskrats or other fur-bearing animals are propagated in open water or marsh areas rather than in pens does not prevent the raising of such animals from constituting the "raising of fur-bearing animals." Where wild fur-bearing animals propagate in their native habitat and are not raised as above described, the trapping or hunting of such animals and activities incidental thereto are not included within section 3(f).

§ 780.125 Raising of poultry in general.

(a) The term "poultry" includes domesticated fowl and game birds. Ducks and pigeons are included. Canaries and parakeets are not included.

(b) The "raising" of poultry includes the breeding, hatching, propagating, feeding, and general care of poultry. Slaughtering, which is the antithesis of "raising," is not included. To constitute "agriculture," slaughtering must come within the secondary meaning of the term "agriculture." The temporary feeding and care of chickens and other poultry for a few days pending sale, shipment or slaughter is not the "raising" of poutry. However, feeding, fattening and caring for poultry over a substantial period may constitute the "raising" of poultry.

§ 780.126 Contract arrangements for raising poultry.

Feed dealers and processors sometimes enter into contractural arrangements with farmers under which the latter agree to raise to marketable size baby chicks supplied by the former who also undertake to furnish all the required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement, the activities of the farmers and their employees in raising the poultry are clearly within section 3(f). The activities of the feed dealer or processor, on the other hand, are not "raising of poultry" and employees engaged in them cannot be considered agricultural employees on that ground. Employees of the feed dealer or processor who perform work on a farm as an incident to or in conjunction with the raising of poultry on the farm are employed in "secondary" agriculture (see §§ 780.137 et seq., and Johnston v. Cotton Producers Assn., 244 F. 2d 553).

§ 780.127 Hatchery operations.

Hatchery operations incident to the breeding of poultry, whether performed in a rural or urban location, are the "raising of poultry" (Miller Hatcheries v. Boyer, 131 F. 2d 283). The application of section 3(f) to employees of hatcheries is further discussed in §§ 780.210–780.214.

PRACTICES EXEMPT UNDER "SECONDARY" MEANING OF AGRICULTURE GENERALLY

§ 780.128 General statement on "secondary" agriculture.

The discussion in §§ 780.106–780.127 relates to the direct farming operations

which come within the "primary" meaning of the definition of "agriculture." As defined in section 3(f) "agriculture" includes not only the farming activities described in the "primary" meaning but also includes, in its "secondary" meaning, "any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market delivery to storage or to market or to carriers for transportation to market" The legislative history makes it plain that this language was particularly included to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist farmers in what is recognized as a purely agricultural task and also to assist a farmer in getting his agricultural goods to market in their raw or natural state, should be included within the definition of agricultural employees (see Bowie v. Gonzalez, 117 F. 2d 11; 81 Cong. Rec. 7876, 7888).

§ 780.129 Required relationship of practices to farming operations.

To come within this secondary meaning, a practice must be performed either by a farmer or on a farm. It must also be performed either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed. In addition, the practice must be performed "as an incident to or in conjunction with" the farming operations. No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the "secondary" meaning of "agriculture." Thus, employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of "agriculture." The inclusion of industrial operations is not within the intent of the definition in section 3(f), nor are processes that are more akin to manufacturing than to agriculture (see Bowie v. Gonzales, 117 F. 2d 11; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473).

Practices Performed "By a Farmer"

§ 780.130 Performance "by a farmer" generally.

Among other things, a practice must be performed by a farmer or on a farm in order to come within the secondary portion of the definition of "agriculture." No precise lines can be drawn which will serve to delimit the term "farmer" in all cases. Essentially, however, the term is an occupational title and the employer must be engaged in activities of a type and to the extent that the person ordinarily regarded as a "farmer" is engaged in order to qualify for the title. If this test is met, it is immaterial for what purpose he engages in farming or whether farming is his sole occupation. Thus, an employer's status as a "farmer" is not altered by the fact that his only purpose is to obtain products useful to him in a non-farming enterprise which he conducts. For example, an employer engaged in raising nursery stock is a "farmer" for purposes of section 3(f) even though his purpose is to supply goods for a separate establishment where he engages in the retail distribution of nursery products. The term "farmer" as used in section 3(f) is not confined to individual persons. Thus an association, a partnership, or a corporation which engages in actual farming operations may be a "farmer" (see Mitchell v. Budd, 350 U.S. 473). This is so even where it operates "what might be called the agricultural analogue of the modern industrial assembly line" (Maneja v. Waialua, 349 U.S. 254).

§ 780.131 Operations which constitute one a "farmer".

Generally, an employer must undertake farming operations of such scope and significance as to constitute a distinct activity, for the purpose of yielding a farm product, in order to be regarded as a "farmer." It does not necessarily follow, however, that any employer is a "farmer" simply because he engages in some actual farming operations of the type specified in section 3(f). Thus, one who merely harvests a crop of agricultural commodities is not a "farmer" although his employees who actually do the harvesting are employed in "agriculture" in those weeks when exclusively so engaged. As a general rule, a farmer performs his farming operations on land owned, leased, or controlled by him and devoted to his own use. The mere fact, therefore, that an employer harvests a growing crop, even under a partnership agreement pursuant to which he provides credit, advisory or other services, is not generally considered to be sufficient to qualify the employer so engaged as a "farmer." Such an employer would stand, in packing or handling the product, in the same relationship to the produce as if it were from the fields or groves of an independent grower. One who engaged merely in practices which are incidental to farming is not a "farmer." For example, a company which merely prepares for market, sells, and ships flowers and plants grown and cultivated on farms by affiliated corporations is not a "farmer." The fact that one has suspended actual farming operations during a period in which he performs only practices incidental to his past or prospective farming operations does not, however, preclude him from qualifying as a "farmer." One otherwise qualified as a farmer does not lose his status as such because he performs farming operations on land which he does not own or control, as in the case of a cattleman using public lands for grazing.

§ 780.132 Operations must be performed "by" a farmer.

"Farmer" includes the employees of a farmer. It does not include an employer merely because he employs a farmer or appoints a farmer as his agent to do the actual work. Thus, the stripping of tobacco, i.e., removing leaves from the stalk, by the employees of an independent warehouse is not a practice performed "by a farmer" even though the warehouse acts as agent for the tobacco farmer or employs the farmer in the stripping operations. One who merely performs services or supplies materials for farmers in return for compensation in money or farm products is not a "farmer." Thus, a person who provides credit and management services to farmers cannot qualify as a "farmer" on that account. Neither can a repairman who repairs and services farm machinery qualify as a "farmer" on that basis. Where crops are grown under contract with a person who provides a market, contributes counsel and advice, make advances and otherwise assists the grower who actually produces the crop, it is the grower and not the person with whom he contracts who is the farmer with respect to that crop (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

§ 780.133 Farmers' cooperative as a "farmer."

(a) The phrase "by a farmer" covers practices performed either by the farmer himself or by the farmer through his employees. Employees of a farmers' cooperative association, however, are employed not by the individual farmers who compose its membership or who are its stockholders, but by the cooperative association itself. Cooperative associations whether in the corporate form or not, are distinct, separate entities from the farmers who own or compose them. The work performed by a farmers' cooperative association is not work performed "by a farmer" but for farmers. Therefore, employees of a farmers' cooperative association are not generally engaged in any practices performed "by a farmer" within the meaning of section 3(f) (Farmers Reservoir Co. v. McComb, 337 U.S. 755; Goldberg v. Crowley Ridge Ass'n., 295 F. 2d 7; McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n., 80 F. Supp. 953, 181 F. 2d 697). The legislative history of the Act supports this interpretation. Statutes usually cite farmers' cooperative associations in express terms if it is intended that they be included. The omission of express language from the Fair Labor Standards Act is significant since many unsuccessful attempts were made on the floor of Congress to secure special treatment for such cooperatives.

(b) It is possible that some farmers' cooperative associations may themselves engage in actual farming operations to an extent and under circumstances sufficient to qualify as a "farmer." In such case, any of their employees who perform

practices as an incident to or in conjunction with such farming operations are employed in "agriculture."

PRACTICES PERFORMED "ON A FARM"

§ 780.134 Performance "on a farm" generally.

If a practice is not performed by a farmer, it must, among other things, be performed "on a farm" to come within the secondary meaning of "agriculture" in section 3(f). Any practice which cannot be performed on a farm, such as "delivery to market," is necessarily excluded, therefore, when performed by someone other than a farmer (see Farmers Reservoir Co. v. McComb, 337 U.S. 755; Chapman v. Durkin, 214 F. 2d 360, cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied 348 U.S. 897). Thus, employees of an alfalfa dehydrator engaged in hauling chopped or unchopped alfalfa away from the farms to the dehydrating plant are not employed in a practice performed "on a farm."

§ 780.135 Meaning of "farm."

A "farm" is a tract of land devoted to the actual farming activities included in the first part of section 3(f). Thus, the gathering of wild plants in the woods for transplantation in a nursery is not an operation performed "on a farm." (For a further discussion, see § 780.207.) The total area of a tract operated as a unit for farming purposes is included in the "farm," irrespective of the fact that some of this area may not be utilized for actual farming operations (see NLRB v. Olaa Sugar Co., 242 F. 2d 714; In re Princeville Canning Co., 14 WH Cases 641 and 762). It is immaterial whether a farm is situated in the city or in the country. However, a place in a city where no primary farming operations are performed is not a farm even if operated by a farmer (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

§ 780.136 Employment in practices on a farm.

Employees engaged in building terraces or threshing wheat and other grain, employees engaged in the erection of silos and granaries, employees engaged in digging wells or building dams for farm ponds, employees engaged in inspecting and culling flocks of poultry, and pilots and flagmen engaged in the aerial dusting and spraying of crops are examples of the types of employees of independent contractors who may be considered employed in practices performed "on a farm." Whether such employees are engaged in "agriculture" depends, of course, on whether the practices are performed as an incident to or in conjunction with the farming operations on the particular farm, as discussed in §§ 780.141–780.147; that is, whether they are carried on as a part of the agricultural function or as a separately organized productive activity (§§ 780.104–780.144). Even though an employee may work on several farms during a workweek, he is regarded as employed "on a farm" for the entire workweek if his work on each farm pertains solely to farming operations on that farm. The fact that a minor and incidental part of the work of such an employee occurs off the farm will not affect this conclusion. Thus, an employee may spend a small amount of time within the workweek in transporting necessary equipment for work to be done on farms. Field employees of a canner or processor of farm products who work on farms during the planting and growing season where they supervise the planting operations and consult with the grower on problems of cultivation are employed in practices performed "on a farm" so long as such work is done entirely on farms save for an incidental amount of reporting to their employer's plant. Other employees of the above employers employed away from the farm would not come within section 3(f). For example, airport employees such as mechanics, loaders, and office workers employed by a crop dusting firm would not be agriculture employees (Wirtz v. Boyls dba Boyls Dusting and Spraying Service 230 F. Supp 246, aff'd per curiam 352 F. (2d) 63; Tobin v. Wenatchee Air Service, 10 WH Cases 680, 21 CCH Lab. Cas. Paragraph 67,019 (E.D. Wash.)).

"SUCH FARMING OPERATIONS"—OF THE FARMER

§ 780.137 Practices must be performed in connection with farmer's own farming.

"Practices * * * performed by a farmer" must be performed as an incident to or in conjunction with "such farming operations" in order to constitute "agriculture" within the secondary meaning of the term. Practices performed by a farmer in connection with his nonfarming operations do not satisfy this requirement (see Calaf v. Gonzalez, 127 F. 2d 934; Mitchell v. Budd, 350 U.S. 473). Furthermore, practices performed by a farmer can meet the above requirement only in the event that they are performed in connection with the farming operations of the same farmer who performs the practices. Thus, the requirement is not met with respect to employees engaged in any practices performed by their employer in connection with farming operations that are not his own (see Farmers Reservoir Co. v. McComb, 337 U.S. 755; Mitchell v. Hunt, 263 F. 2d 913; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Bowie v. Gonzalez, 117 F. 2d 11). The processing by a farmer of commodities of other farmers, if incident to or in conjunction with farming operations, is incidental to or in conjunction with the farming operations of the other farmers and not incidental to or in conjunction with the farming operations of the farmer doing the processing (Mitchell v. Huntsville Nurseries, supra; Farmers Reservoir Co. v. McComb, supra; Bowie v. Gonzalez, supra).

§ 780.138 Application of the general principles.

Some examples will serve to illustrate the above principles. Employees of a fruit grower who dry or pack fruit not grown by their employer are not within section (f). This is also true of storage operations conducted by a farmer in connection with products grown by someone other than the farmer. Employees of a grower-operator of a sugarcane mill who transport cane from fields to the mill are not within section 3(f) where such cane is grown by independent farmers on their land as well as by the mill operator (Bowie v. Gonzalez, 117 F. 2d 11). Employees of a tobacco grower who strip tobacco (i.e., remove the leaves from the stalk) are not agricultural employees when performing this operation on tobacco not grown by their employer. On the other hand, where a farmer rents some space in a warehouse or packinghouse located off the farm and the farmer's own employees there engage in handling or packing only his own products for market, such operations by the farmers are within section 3(f) if performed as an incident to or in conjunction with his farming operations. Such arrangements are distinguished from those where the employees are not actually employed by the farmer. The fact that a packing shed is conducted by a family partnership, packing products exclusively grown on lands owned and operated by individuals constituting the partnership, does not alter the status of the packing activity. Thus, if in a particular case an individual farmer is engaged in agriculture, a family partnership which performs the same operations would also be engaged in agriculture. (Dofflemeyer v. NLRB, 206 F. 2d 813.) However, an incorporated association of farmers that does not itself engage in farming operations is not engaged in agriculture though it processes at its packing shed produce grown exclusively by the farmer members of the association. (Goldberg v. Crowley Ridge and Fruit Growers Association, 295 F (2d) 7 (C.A. 8).)

§ 780.139 Pea vining.

Vining employees of a pea vinery located on a farm, who vine only the peas grown on that particular farm, are engaged in agriculture. If they also vine peas grown on other farms, such operations could not be within section 3(f) unless the farmer-employer owns or operates the other farms and vines his own peas exclusively. However, the work of vining station employees in weeks in which the stations vine only peas grown by a canner on farms owned or leased by him is considered part of the canning operations. As such, the cannery operations, including the vining operations, are within section 3(f) only if the canner cans crops which he grows himself and if the canning operations are subordinate to the farming operations.

§ 780.140 Place of performing the practice as a factor.

So long as the farming operations to which a farmer's practice pertains are

performed by him in his capacity as a farmer, the status of the practice is not necessarily altered by the fact that the farming operations take place on more than one farm or by the fact that some of the operations are performed off his farm (NLRB v. Olaa Sugar Co., 242 F. 2d 714). Thus, where the practice is performed with respect to products of farming operations, the controlling consideration is whether the products were produced by the farming operations of the farmer who performs the practice rather than at what place or on whose land he produced them. Ordinarily, a practice performed by a farmer in connection with farming operations conducted on land which he owns or leases will be considered as performed in connection with the farming operations of such farmer in the absence of facts indicating that the farming operations are actually those of someone else. Conversely, a contrary conclusion will ordinarily be justified if such farmer is not the owner or a bona fide lessee of such land during the period when the farming operations take place. The question of whose farming operations are actually being conducted in cases where they are performed pursuant to an agreement or arrangement, not amounting to a bona fide lease, between the farmer who performs the practice and the landowner necessarily involves a careful scrutiny of the facts and circumstances surrounding the arrangement. Where commodities are grown on the farm of the actual grower under contract with another, practices performed by the latter on the commodities, off the farm where they were grown, relate to farming operations of the grower rather than to any farming operations of the contract purchaser. This is true even though the contract purports to lease the land to the latter, give him the title to the crop at all times, and confer on him the right to supervise the growing operations, where the facts as a whole show that the contract purchaser provides a farm market, cash advances, and advice and counsel but does not really perform growing operations (Mitchell v. Huntsville Nurseries, 267 F. 2d 286).

"SUCH FARMING OPERATIONS"—ON THE FARM

§ 780.141 Practices must relate to farming operations on the particular farm.

"Practices * * * performed * * * on a farm" must be performed as an incident to or in conjunction with "such farming operations" in order to constitute "agriculture" within the secondary meaning of the term. No practice performed with respect to farm commodities is within the language under discussion by reason of its performance on a farm unless all of such commodities are the products of that farm. Thus, the performance on a farm of any practice, such as packing or storing, which may be incidental to farming operations cannot constitute a basis for considering the employees engaged in agriculture if the practice is performed upon any commodities that have been produced elsewhere than on such farm (see Mitchell v. Hunt, 263 F. 2d 913). The construction by an independent contractor of a granary on a farm is not connected with "such" farming operations if the farmer for whom it is built intends to use the structure for storing grain produced on other farms. Nor is the requirement met with respect to employees engaged in any other practices performed on a farm, but not by a farmer, in connection with farming operations that are not conducted on that particular farm. The fact that such a practice pertains to farming operations generally or to those performed on a number of farms, rather than to those performed on the same farm only, is sufficient to take it outside the scope of the statutory language. Area soil surveys and genetics research activities, results of which are made available to a number of farmers, are typical of the practices to which this principle applies and which are not within section 3(f) under this provision.

§ 780.142 Practices on a farm not related to farming operations.

Practices performed on a farm in connection with nonfarming operations performed on or off such farm do not meet the requirement stated in § 780.141. For example, if a farmer operates a gravel pit on his farm, none of the practices performed in connection with the operation of such gravel pit would be within section 3(f). Whether or not some practices are performed in connection with farming operations conducted on the farm where they are performed must be determined with reference to the purpose of the farmer for whom the practice is performed. Thus, land clearing operations may or may not be connected with such farming operations depending on whether or not the farmer intends to devote the cleared land to farm use.

§ 780.143 Practices on a farm not performed for the farmer.

The fact that a practice performed on a farm is not performed by or for the farmer is a strong indication that it is not performed in connection with the farming operations there conducted. Thus, where such an employer other than the farmer performs certain work on a farm solely for himself in furtherance of his own enterprise, the practice cannot ordinarily be regarded as performed in connection with farming operations conducted on the farm. For example, it is clear that the work of employees of a utility company in trimming and cutting trees for power and communications lines is part of a nonfarming enterprise outside the scope of agriculture. When a packer of vegetables or dehydrator of alfalfa buys the standing crop from the farmer, harvests it with his own crew of employees, and transports the harvested crop to his off-the-farm packing or dehydrating plant, the transporting and plant employees, who are not engaged in "primary" agriculture as are the harvesting employees (see NLRB v. Olaa Sugar Co., 242 F. 2d 714), are clearly not agricultural employees. Such an employer cannot automatically become an agricultural employer by merely transferring the plant operations to the farm so as to meet the "on a farm" requirement. His employees will continue outside the scope of agriculture if the packing or dehydrating is not in reality done for the farmer. The question of for whom the practices are performed is one of fact. In determining the question, however, the fact that prior to the performance of the packing or dehydrating operations, the farmer has relinquished title and divested himself of further responsibility with respect to the product, is highly significant.

PERFORMANCE OF THE PRACTICE "AS AN INCIDENT TO OR IN CONJUNCTION WITH" THE FARMING OPERATIONS

§ 780.144 "As an incident to or in conjunction with" the farming operations.

In order for practices other than actual farming operations to constitute "agriculture" within the meaning of section 3(f) of the Act, it is not enough that they be performed by a farmer or on a farm in connection with the farming operations conducted by such farmer or on such farm, as explained in §§ 780.129-780.143. They must also be performed "as an incident to or in conjunction with" these farming operations. The line between practices that are and those that are not performed "as an incident to or in conjunction with" such farming operations is not susceptible of precise definition. Generally, a practice performed in connection with farming operations is within the statutory language only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business. Industrial operations (Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398) and processes that are more akin to manufacturing than to agriculture (Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473) are not included. This is also true when on-the-farm practices are performed for a farmer. As to when practices may be regarded as performed for a farmer, see § 780.143.

§ 780.145 The relationship is determined by consideration of all relevant factors.

The character of a practice as a part of the agricultural activity or as a distinct business activity must be determined by examination and evaluation of all the relevant facts and circumstances in the light of the pertinent language and intent of the Act. The result will not depend on any mechanical application of isolated factors or tests. Rather, the total situation will control (Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473). Due weight should be given to any available criteria which may indicate whether performance of such a practice may properly be considered an incident to farming within the intent of the Act. Thus, the general relationship, if any, of the practice to farming as evidenced by

common understanding, competitive factors, and the prevalence of its performance by farmers (see § 780.146), and similar pertinent matters should be considered. Other factors to be considered in determining whether a practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. With respect to practices performed on farm products (see § 780.147) and in the consideration of any specific practices (see §§ 780.148–780.158 and 780.205–780.214), there may be special factors in addition to those above mentioned which may aid in the determination.

§ 780.146 Importance of relationship of the practice to farming generally.

The inclusion of incidental practices in the definition of agriculture was not intended to include typical factory workers or industrial operations, and the sponsors of the bill made it clear that the erection and operation on a farm by a farmer of a factory, even one using raw materials which he grows, "would not make the manufacturing * * * a farming operation" (see 81 Cong. Rec. 7658; Maneja v. Waialua, 349 U.S. 254). Accordingly, in determining whether a given practice is performed "as an incident to or in conjunction with" farming operations under the intended meaning of section 3(f), the nature of the practice and the circumstances under which it is performed must be considered in the light of the common understanding of what is agricultural and what is not, of the facts indicating whether performance of the practice is in competition with agricultural or with industrial operations, and of the extent to which such a practice is ordinarily performed by farmers incidentally to their farming operations (see Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Vives v. Seralles, 145 F. 2d 552; Mitchell v. Hunt, 263 F. 2d 913; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; Mitchell v. Budd, 350 U.S. 473; Maneja v. Waialua, supra). Such an inquiry would appear to have a direct bearing on whether a practice is an "established" part of agriculture. The fact that farmers raising a commodity on which a given practice is performed do not ordinarily perform such a practice has been considered a significant indication that the practice is not "agriculture" within the secondary meaning of section 3(f) (Mitchell v. Budd, supra; Maneja v. Waialua, supra). The test to be applied is not the proportion of those performing the practice who produce the commodities on which it is performed but the proportion of those producing such commodities who perform the practice (Maneja v. Waialua, supra). In Mitchell v. Budd, supra, the U.S. Supreme Court found that the following two factors tipped the scales so as to take the employees of tobacco bulking plants outside the scope of agriculture: Tobacco farmers do not ordinarily perform the bulk ing operation; and, the bulking operation is a process which changes tobacco leaf in many ways and turns it into an industrial product.

§ 780.147 Practices performed on farm products-special factors considered.

In determining whether a practice performed on agricultural or horticultural commodities is incident to or in conjunction with the farming operations of a farmer or a farm, it is also necessary to consider the type of product resulting from the practice—as whether the raw or natural state of the commodity has been changed. Such a change may be a strong indication that the practice is not within the scope of argiculture (Mitchell v. Budd, 350 U.S. 473); the view was expressed in the legislative debates on the Act that it marks the dividing line between processing as an agricutural function and processing as a manufacturing operation (Maneja v. Waialua, 349 U.S. 254, citing 81 Cong. Rec. 7659–7660, 7877–7879). Consideration should also be given to the value added to the product as a result of the practice and whether a sales organization is maintained for the disposal of the product. Seasonality of the operations involved in the practice would not be very helpful as a test to distinguish between operations incident to agriculture and operations of commercial or industrial processors who handle a similar volume of the same seasonal crop. But the length of the period during which the practice is performed might cast some light on whether the operations are conducted as a part of agriculture or as a separate undertaking when considered together with the amount of investment, payroll, and other factors. In some cases, the fact that products resulting from the practice are sold under the producer's own label rather than under that of the purchaser may furnish an indication that the practice is conducted as a separate business activity rather than as a part of agriculture.

Practices Included When Performed as Provided in Section 3(f)

§ 780.148 "Any" practices meeting the requirements will qualify for exemption.

The language of section 3(f) of the Act, in defining the "secondary" meaning of "agriculture," provides that any practices performed by a farmer or on a farm as an incident to or in conjunction with such (his or its) farming operations are within the definition. The practices which may be exempt as "agriculture" if so performed are stated to include forestry or lumbering operations, preparation for market, and delivery to storage or to market or to carriers for transportation to market. The specification of these practices is illustrative rather than limiting in nature. The broad language of the definition clearly includes all practices thus performed and not merely those named (see Maneja v. Waialua, 349 U.S. 254).

§ 780.149 Named practices as well as others must meet the requirements.

The specific practices named in section 3(f) must, like any others, be performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, for this condition applies to "any" practices brought within the secondary meaning of agriculture as defined in that section of the Act. Thus, the preparation for market, by a farmer's employees on a farm of animals to be sold at a livestock auction is not within section 3(f) if animals from other farmers and other farms are also handled. The practice is not performed as an incident to or in conjunction with "such" farming operations, that is, the operations of the farmer by whom, or of the farm on which, the livestock is raised (Mitchell v. Hunt, 263 F. 2d 913).

Preparation for Market

§ 780.150 Scope and limits of "preparation for market."

"Preparation for market" is also named as one of the practices which may be included in "agriculture." The term includes the operations normally performed upon farm commodities to prepare them for the farmer's market. The farmer's market normally means the wholesaler, processor, or distributing agency to which the farmer delivers his products. "Preparation for market" clearly has reference to activities which precede "delivery to market." It is not, however, synonymous with "preparation for sale." The term must be treated differently with respect to various commodities. It is emphasized that "preparation for market," like other practices, must be performed "by a farmer or on a farm as an incident to or in conjunction with such farming operations" in order to be within section 3(f).

§ 780.151 Particular operations on commodities.

Subject to the rules heretofore discussed, the following activities are, among others, activities that may be performed in the "preparation for market" of the indicated commodities and may come within section 3(f):

(a) *Grain, seed, and forage crops.* Weighing, binning, stacking, drying, cleaning, grading, shelling, sorting, packing and storing.

(b) *Fruits and vegetables.* Assembling, ripening, cleaning, grading, sorting, drying, preserving, packing, and storing. (See In the Matter of J. J. Crosetti, 29 LRRM 1353, 98 NLRB 268; In the Matter of Imperial Garden Growers, 91 NLRB

1034, 26 LRRM 1632; Lenroot v. Hazelhurst Mercantitle Co., 59 F. Supp. 595; North Whittier Heights Citrus Ass'n v. NLRB, 109 F. 2d 76; Dofflemeyer v. NLRB, 206 F. 2d 813.)

(c) *Peanuts and nuts (pecans, walnuts, etc.).* Grading, cracking, shelling, cleaning, sorting, packing, and storing.

(d) *Eggs.* Handling, cooling, grading, candling, and packing.

(e) *Wool.* Grading and packing.

(f) *Dairy products.* Separating, cooling, packing, and storing.

(g) *Cotton.* Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

(h) *Nursery stock.* Handling, sorting, grading, trimming, bundling, storing, wrapping, and packing. (See Jordan v. Stark Brothers Nurseries, 45 F. Supp. 769; Mitchell v. Huntsville Nurseries, 267 F. 2d 286.)

(i) *Tobacco.* Handling, grading, drying, stripping from stalk, tying, sorting, storing, and loading.

(j) *Livestock.* Handling and loading.

(k) *Poultry.* Culling, grading, cooping, and loading.

(l) *Honey.* Assembling, extracting, heating, ripening, straining, cleaning, grading, weighing, blending, packaging, and storing.

(m) *Fur.* Removing the pelt, scraping, drying, putting on boards, and packing.

SPECIFIED DELIVERY OPERATIONS

§ 780.152 General scope of specified delivery operations.

Employment in "secondary" agriculture, under section 3(f), includes employment in "delivery to storage or to market or to carriers for transportation to market" when performed by a farmer as an incident to or in conjunction with his own farming operations. To the extent that such deliveries may be accomplished without leaving the farm where the commodities delivered are grown, the exemption extends also to employees of someone other than the farmer who raised them if they are performing such deliveries for the farmer. However, normally such deliveries require travel off the farm, and where this is the case, only employees of a farmer engaged in making them can come within section 3(f). Such employees would not be engaged in agriculture in any workweek when they delivered commodities of other farmers, however, because such deliveries would not be performed as an incident to or in conjunction with "such" farming operations, as explained previously. If the "delivery" trip is within section 3(f) the necessary return trip to the farm is also included.

§ 780.153 Delivery "to storage."

The term "delivery to storage" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to the places where they are to be stored or held pending preparation for or delivery to market. The fact that the commodities have been subjected to some other practice "by a farmer or on a farm as an incident to or in conjunction with such farming operations" does not preclude the inclusion of "delivery to storage" within section 3(f). The same is true with respect to "delivery to market" and "delivery to carriers for transportation to market."

§ 780.154 Delivery "to market."

The term "delivery * * * to market" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market. It ordinarily refers to the initial journey of the farmer's products from the farm to the market. The market referred to is the farmer's market which normally means the distributing agency, cooperative marketing agency, wholesaler or processor to which the farmer delivers his products. Delivery to market ends with the delivery of the commodities at the receiving platform of such a farmer's market (Mitchell v. Budd, 350 U.S. 473). When the delivery involves travel off the farm (which would normally be the case) the delivery must be performed by the employees employed by the farmer in order to constitute an agricultural practice. Delivery by an independent contractor for the farmer or a group of farmers or by a "bird-dog" operator who has purchased the commodities on the farm from the farmer is not an agricultural practice (see Chapman v. Durkin, 214 F. 2d 360, cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied 348 U.S. 897). However, in the case of fruits or vegetables, the Act provides a special overtime pay exemption for intrastate transportation of the freshly harvested commodities from the farm to a place of first marketing or first processing, which may apply to employees engaged in such transportation regardless of whether they are employed by the farmer. See Subpart J of this Part 780, discussing the exemption provided by section 13(b)(16).

§ 780.155 Delivery "to carriers for transportation to market."

The term "delivery * * * to carriers for transportation to market" includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, and poultry to any carrier (including carriers by truck, rail, water, etc.) for transportation by such carrier to market. The market referred to is the farmer's market which normally means the distributing agency, cooperative marketing agency, wholesaler, or processor to which the farmer delivers his products. As in the case of "delivery to market," when it involves travel off the farm (as would normally be the case) the delivery must be performed by the farmer's own employees in order to constitute an agricultural practice. Employees of the carrier who transport to market the commodities which are delivered to it are not within the scope of agriculture.

TRANSPORTATION OPERATIONS NOT MENTIONED IN SECTION 3(f)

§ 780.156 Transportation of farm products from the fields or farm.

Transportation of farm products from the fields where they are grown or from the farm to other places may be within the "secondary" meaning of agriculture, regardless of whether the transportation is included as "delivery to storage or to market or to carriers for transportation to market": *Provided only*, That it is performed by a farmer or on a farm as an incident to or in conjunction with the farming operations of that farmer or that farm. Of course, any transportation operations which are part of, and not subsequent to, the "primary" farming operations are also within section 3(f). These principles have been recognized by the courts in the following cases, among others: Maneja v. Waialua, 349 U.S. 254; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Bowie v. Gonzales, 117 F. 2d 11; Calaf v. Gonzales, 127 F. 8d 934; Vives v. Serralles, 145 F. 2d 552; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398. If not performed by the farmer, transportation beyond the limits of the farm is not within section 3(f), even when performed by a purchaser of the unharvested commodities who has harvested the crop. The scope of section 3(f) includes the harvesting employees but does not extend to the employees transporting the commodities off the farm (Chapman v. Durkin, 214 F. 2d 360, cert. denied, 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, cert. denied, 348 U.S. 897).

§ 780.157 Other transportation incident to farming.

(a) Transportation by a farmer or on a farm as an incident to or in conjunction with the farming operations of the farmer or of that farm is within the scope of agriculture even though things other than farm commodities raised by the farmer or on the farm are being transported. As previously indicated, transportation of commodities raised by other farmers or on other farms would not be within section 3(f). The definition of agriculture clearly covers the transportation by the farmer, as an incident to or in conjunction with his farming activities, of farm implements, supplies, and fieldworkers to and from the fields, regardless of whether such transportation involves travel on or off the farm and regardless of the method used. The Supreme Court of the United States so held in Maneja v. Waialua, 349 U.S. 254. Transportation of fieldworkers to or from the farm by persons other than the farmer does not come within section 3(f). However, under section 13(b)(16) of the Act, discussed in Subpart J of this Part 780, an overtime pay exemption is provided for transportation, whether or not performed by the farmer, of fruit or vegetable harvest workers to and from the farm, within the same State where the farm is located. In the case of transportation to the farm of materials or supplies, it seems clear that transportation to the farm by the farmer of materials and supplies for use in his farming

operations, such as seed, animal or poultry feed, farm machinery or equipment, etc., would be incidental to the farmer's actual farming operations. Thus, truckdrivers employed by a farmer to haul feed to the farm for feeding pigs are engaged in "agriculture."

(b) With respect to the practice of transporting farm products from farms to a processing establishment by employees of a person who owns both the farms and the establishment, such practice may or may not be incident to or in conjunction with the employer's farming operations depending on all the pertinent facts. For example, the transportation is clearly incidental to milling operations, rather than to farming, where the employees engaged in it are hired by the mill, carried on its payroll, do no agricultural work on the farms, and report for and end their daily duties at the mill where the transportation vehicles are kept (Calaf v. Gonzales, 127 F. 2d 934). On the other hand, a different result is reached where the facts show that the transportation workers are farm employees whose work is closely integrated with harvesting and other direct farming operations (NLRB v. Olaa Sugar Co., 242 F. 2d 714; and see Vives v. Serralles, 145 F. 2d 552). The method by which the transportation is accomplished is not material (Maneja v. Waialua, 349 U.S. 254).

OTHER UNLISTED PRACTICES WHICH MAY BE WITHIN SECTION 3(F)

§ 780.158 Examples of other practices within section 3(f) if requirements are met.

(a) As has been noted above, the term "agriculture" includes other practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations conducted by such farmer or on such farm in addition to the practices listed in section 3(f). The selling (including selling at roadside stands or by mail order and house to house selling) by a farmer and his employees of his agricultural commodities, dairy products, etc., is such a practice provided it does not amount to a separate business. Other such practices are office work and maintenance and protective work. Section 3(f) includes, for example, secretaries, clerks, bookkeepers, night watchmen, maintenance workers, engineers, and others who are employed by a farmer or on a farm if their work is part of the agricultural activity and is subordinate to the farming operations of such farmer or on such farm. (Damutz v. Pinchbeck, 66 F. Supp. 667, aff'd. 158 F. 2d 882). Employees of a farmer who repair the mechanical implements used in farming, as a subordinate and necessary task incident to their employer's farming operations, are within section 3(f). It makes no difference that the work is done by a separate labor force in a repair shop maintained for the purpose, where the size of the farming operations is such as to justify it. Only employees engaged in the repair of equipment used in performing agricultural functions would be within section 3(f), however; employees repairing equipment used by the employer in industrial or other nonfarming activities would be outside the scope of agriculture. (Maneja v. Waialua, 349 U.S. 254.) The repair of equipment used by other farmers in their farming operations would not qualify as an agricultural practice incident to the farming operations of the farmer employing the repair workers.

(b) The following are other examples of practices which may qualify as "agriculture" under the secondary meaning in section 3(f), when done on a farm, whether done by a farmer or by a contractor for the farmer, so long as they do not relate to farming operations on any other farms: The operation of a cook camp for the sole purpose of feeding persons engaged exclusively in agriculture on that farm; artificial insemination of the farm animals; custom corn shelling and grinding of feed for the farmer; the packing of apples by portable packing machines which are moved from farm to farm packing only apples grown on the particular farm where the packing is being performed; the culling, catching, cooping, and loading of poultry; the threshing of wheat; the shearing of sheep; the gathering and baling of straw.

(c) It must be emphasized with respect to all practices performed on products for which exemption is claimed that they must be performed only on the products produced or raised by the particular farmer or on the particular farm (Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Hunt, 263 F. 2d 913; NLRB v. Olaa Sugar Co., 242 F. 2d 714; Farmers Reservoir Co. v. McComb, 337 U.S. 755; Walling v. Peacock Corp., 58 F. Supp. 880; Lenroot v. Hazelhurst Mercantile Co., 153 F. 2d 153; Jordan v. Stark Bros. Nurseries, 45 F. Supp. 769).

Subpart C—Agriculture As It Relates To Specific Situations

FORESTRY OR LUMBERING OPERATIONS

§ 780.200 Inclusion of forestry or lumbering operations in agriculture is limited.

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed "by a farmer or on a farm as an incident to or in conjunction with such farming operation." While "agriculture" is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not considered agricultural employees.

§ 780.201 Meaning of "forestry or lumbering operations."

The term "forestry or lumbering operations" refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.205–780.209 and in Part 788 of this chapter which considers the section 13(a)(13) exemption for forestry or logging operations in which not more than eight employees are employed.) "Wood working" as such is not included in "forestry" or "lumbering" operations. The manufacture of charcoal under modern methods is neither a "forestry" nor "lumbering" operation and cannot be regarded as "agriculture."

§ 780.202 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed "in conjunction with" as well as "incident to" farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural if the person performing the practice did any farming, no matter how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (Ridgeway v. Warren, 60 F. Supp. 363 (M.D. Tenn.); in re Combs, 5 WH Cases 595, 10 Labor Cases 62,802 (M.D. Ga.)). To illustrate, where an employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous to such timberland, he would not be engaged in agriculture so far as his forestry or lumbering operations are concerned. In such case, the forestry or lumbering operations would clearly not be subordinate to the farming operations but rather the principal or a separate business of the "farmer."

§ 780.203 Performance of operations on a farm but not by the farmer.

Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner are not within the scope of agriculture unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to "such farming operations."

§ 780.204 Number of employees engaged in operations not material.

The fact that the employer employs fewer than a certain number of employees in forestry and lumbering operations does not provide a basis for their being considered as agricultural employees. This is to be distinguished from the exemption provided by section 13(a)(13) (discussed in Part 788 of this chapter) which is limited to employers employing not more than eight employees

in the forestry or logging operations described therein.

NURSERY AND LANDSCAPING OPERATIONS

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in "agriculture":

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

§ 780.206 Planting and lawn mowing.

(a) The planting of trees and bushes is within the scope of agriculture where it constitutes a step in the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, or where it constitutes a practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations (as where it is part of the subordinate marketing operations of the grower of such trees or bushes). Thus, employees of the nurseryman who raised such nursery stock are doing agricultural work when they plant the stock on private or public property, trim, spray, brace, and treat the planted stock, or perform other duties incidental to its care and preservation. Similarly, employees who plant fruit trees and berry stock not raised by their employer would be considered as engaged in agriculture if the planting is done on a farm as an incident to or in conjunction with the farming operation on that farm.

(b) On the other hand, the planting of trees and bushes on residential, business, or public property is not agriculture when it is done by employees of an employer who has not grown the trees and bushes, or who, if he has grown them, engages in the planting operations as an incident, not to his farming operations, but to landscaping operations which include principally the laying of sod and the construction of pools, walks, drives, and the like.

(c) The mowing of lawns, except where it can be considered incidental to farming operations, is not agricultural work.

§ 780.207 Operations with respect to wild plants.

Nurseries frequently obtain plants growing wild in the woods or fields which are to be further cultivated by the nursery before they are sold by it. Obtaining such plants is a practice which is incidental to farming operations. The activities are therefore within the scope of agriculture if performed by a farmer or on a farm. Thus, employees of the nursery are engaged in agriculture when performing these activities. On the other hand, employees of an independent contractor performing these activities off the farm would not be engaged in agriculture. The transplanting of such wild plants in the nursery is performed "on a farm" and is an agricultural activity whether performed by employees of an independent contractor or by employees of the nursery.

§ 780.208 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.201.)

§ 780.209 Packing, storage, warehousing, and sale of nursery products.

Employees of a grower of nursery stock who work in packing and storage sheds sorting the stock, grading and trimming it, racking it in bins, and packing it for shipment are employed in "agriculture" provided they handle only products grown by their employer and their activities constitute an established part of their employer's agricultural activities and are subordinate to his farming operations. Such employees are not employed in agriculture when they handle the products of other growers (Mitchell v. Huntsville Nurseries, 267 F. 2d 286; Jordan v. Stark Bros. Nurseries & Orchards Co., 45 F. Supp. 769). Agricultural activities would typically include employees engaged in the balling and storing of shrubs and trees grown in the nursery. Where a grower of nursery stock operates, as a separate enterprise, a processing establishment or an establishment for the wholesale or retail distribution of such commodities, the employees in such separate enterprise are not engaged in agriculture (see Walling v. Rocklin, 132 F. 2d 3; Mitchell v. Huntsville Nurseries, 267 F. 2d 286). Although the handling and the sale of nursery commodities by the grower at or near the place where they were grown may be incidental to his farming operations, the character of these operations changes when they are performed in an establishment set up as a marketing point to aid the distribution of those products.

HATCHERY OPERATIONS

§ 780.210 The typical hatchery operations constitute "agriculture."

As stated in § 780.127, the typical hatchery is engaged in "agriculture," whether in a rural or city location. Where the hatchery is engaged solely in procuring eggs for hatching, performing the hatching operations, and selling the chicks, all the employees including office and maintenance workers are engaged in agriculture (see Miller Hatcheries v. Boyer, 131 F. 2d 283).

§ 780.211 Contract production of hatching eggs.

It is common practice for hatcherymen to enter into arrangements with farmer poultry raisers for the production of hatching eggs which the hatchery agrees to buy. Ordinarily, the farmer furnishes the facilities, feed and labor and the hatchery furnishes the basic stock of poultry. The farmer undertakes a specialized program of care and improvement of the flock in cooperation with the hatchery. The hatchery may at times have a surplus of eggs, including those suitable for hatching and culled eggs which it sells. Activities such as grading and packing performed by the hatchery employees in connection with the disposal of these eggs, are an incident to the breeding of poultry by the hatchery and are within the scope of agriculture.

§ 780.212 Hatchery employees working on farms.

The work of hatchery employees in connection with the maintenance of the quality of the poultry flock on farms is also part of the "raising" operations. This includes testing for disease, culling, weighing, cooping, loading, and transporting the culled birds. The catching and loading of broilers on farms by hatchery employees for transportation to market are agricultural operations.

§ 780.213 Produce business.

In some instances, hatcheries also engage in the produce business as such and commingle with the culled eggs and chickens other eggs and chickens which they buy for resale. In such a case that work which relates to both the hatchery and produce types of activities would not be within the scope of agriculture.

§ 780.214 Feed sales and other activities.

In some situations, the hatchery also operates a feed store and furnishes feed to the growers. As in the case of the produce business operated by a hatchery, this is not an agricultural activity and employees engaged therein, such as truckdrivers hauling feed to growers, are not agricultural employees. Also office workers and other employees are not employed in agriculture when their duties relate to nonagricultural activities.

Subpart D—Employment in Agriculture That Is Exempted From the Minimum Wage and Overtime Pay Requirements Under Section 13(a)(6).

STATUTORY PROVISIONS

§ 780.300 Statutory exemptions in section 13(a)(6).

Section 13(a)(6) of the Act exempts from the minimum wage requirements of section 6 and from the overtime pay requirements of section 7:

Any employee employed in agriculture: (A) If such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is

customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age 16 are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock.

§ 780.301 Other pertinent statutory provisions.

(a) Man-day is defined by section 3(u) of the Act as follows:

"Man-day" means any day during which an employee performs any agriculture labor for not less than 1 hour.

(b) Under section 3(e) of the Act the term employee does not include certain individuals in determining man-days of labor. Section 3(e) provides that:

"Employee" includes any individual employed by an employer, except that such term shall not, for the purposes of section 3(u) include—

(1) Any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family, or

(2) Any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than 13 weeks during the preceding calendar year.

(c) The legislative history of the 1966 amendments to the Fair Labor Standards Act indicates that the Congress in enacting minimum wage protection (section 6(a)(5)) for agriculture workers for the first time sought to provide a minimum wage floor for the farmworkers on large farms or agri-business enterprises. The section 13(a)(6)(A) exemption was intended to exempt those farmworkers on the smaller or family-size farms. In keeping with this intention, a labor requirement of 500 man-days was incorporated into the exemption, and certain workers were specifically excluded from the man-day count, as provided in section 3(e) (1) and (2).

§ 780.302 Basic conditions of section 13(a)(6)(A).

Section 13(a)(6)(A) applies to an employee provided all the following conditions are met:

(a) He must be "employed in agriculture"

(b) By an "employer"

(c) Who did not use more than "500 man-days" of agricultural labor

(d) During any "calendar quarter of the preceding calendar year."

The following sections discuss the meaning and application of these requirements.

§ 780.303 Exemption applicable on employee basis.

Section 13(a)(6)(A) exempts "any employee employed in agriculture * * * by an employer * * *." It is clear from this language that it is the activities of the employee rather than those of his employer which determine the application of the exemption. In other words, the exemption applies only to employees who are engaged in agricultural activities. Thus some employees of the employer may be exempt while others may not. In any case the burden of effecting segregation between exempt and nonexempt work as between different groups of employees is upon the employer. For a more detailed discussion of what constitutes employment in agriculture, see Subpart B of this part.

§ 780.304 "Employed by an employer."

(a) The employer may be an individual, a partnership, or a corporation. It is not necessary that the employer be a farmer as defined in § 780.131. It is sufficient that he "uses" agricultural labor.

(b) In applying this exemption, one of the main criteria is the number of man-days of agricultural labor used by the employer. Section 13(a)(6)(A) provides that the exemption shall not apply to an employee employed in agriculture "if such employee is employed by an employer who did not * * * use more than 500 man-days of agricultural labor * * *." From this language of the statute, the man-days of all agricultural workers, unless specifically excluded, of an employer whether he be the owner of a single farm, the owner of an enterprise consisting of several farms, a tenant farmer, an independent contractor, etc., are to be counted for purposes of section 13(a)(6)(A) whether they are employed at one place or several widely scattered places. For example if an employer owns and operates two farms, it is the total number of man-days used on both farms and not that used on each individual farm that determines whether he meets the 500 man-day test. Likewise independent contractor who harvests crops on different farms during the harvesting season must total all the man-days of agricultural labor used on all such farms except those excludable under section 3(e) in determining whether he meets the 500 man-day test.

§ 780.305 500 man-day provision.

(a) Section 3(u) of the Act defines "man-day" to meat "any day during which an employee performs agricultural labor for not less than 1 hour." 500 man-days is approximately the equivalent of seven employees employed full-time in a calendar quarter. However, a farmer who hires temporary or part-time employees during part of the year, such as the harvesting season, may exceed the man-day test even though he may have only two or three full-time employees.

(b) All of the employer's employees who are engaged in "agricultural labor" except those specifically excluded by section 3(e) (see § 780.301) and those exempt under section 13(a)(14) (see Subpart F of this part) must be counted in determining whether the 500 man-day test is met. This is true even though an employee may be exempt from the monetary provisions under another section of the Act. For example, a general manager of a farm may be an exempt executive employee under section 13(a)(1) or a sheepherder may meet the requirements of section 13(a)(6)(E). Regardless of those exemptions, their man-days of employment would be included in the man-day count of the employer.

§ 780.306 Calendar quarter of the preceding calendar year defined.

In applying section 13(a)(6)(A), it is necessary to consider each of the four calendar quarters (January 1–March 31; April 1–June 30; July 1–September 30; October 1–December 31) in the preceding calendar year (January 1–December 31). If in any calendar quarter of the preceding calendar year the employer used more than 500 man-days of agricultural labor, he must comply with the minimum wage requirements of section 6(a)(5) with respect to any employee not otherwise exempt in the current year. Compliance with the Act is required in the current year regardless of the number of man-days of agricultural labor used in the current year. On the other hand, if in the preceding calendar year the number of man-days used did not exceed 500 in any calendar quarter, there is no requirement to comply with respect to employment of agricultural labor in the current calendar year regardless of how many man-days are used in any calendar quarter of the current calendar year. Such employees are exempt under the basic provisions of section 13(a)(6)(A).

§ 780.307 Exemption for employer's immediate family.

Section 13(a)(6)(B) of the Fair Labor Standards Amendments of 1966 provides a minimum wage and overtime exemption in the case of "any employee engaged in agriculture * * * if such employee is the parent, spouse, child, or other member of the employer's immediate family." The requirements of this exemption, evident from the statutory language, are that the employee be employed in agriculture and that he be a close blood relative, spouse or member of the employer's immediate family. Reference is made to Subpart B of this part as to what constitutes employment in agriculture. The section 13(a)(6)(B) exemption applies to such an individual even though he is employed by an employer who otherwise used more than 500 man-days of agricultural labor in a calendar quarter of the preceding calendar year, as discussed in § 780.305.

§ 780.308 Definition of immediate family.

The act does not define the scope of "immediate family." Whether an individual other than the parent, spouse, child is a member of the employer's immediate family for purposes of section 13(a)(6)(B) and section 3(e)(1), such as a brother, sister, grandchild, brother-in-law, will depend upon all the facts and circumstances surrounding the relationship, rather than upon any single rule or test. However, persons related to the employer, either by blood or marriage, and living permanently as a part of the same household of the employer would usually be considered to qualify as a part of the employer's "immediate family."

§ 780.309 Man-day exclusion.

Section 3(e)(1) specifically excludes from the employer's man-day total (as defined in section 3(u)) employees who qualify for exemption under section 13(a)(6)(B). See § 780.301. This man-day count is a basic factor in the application of the section 13(a)(6)(A) exemption. See § 780.302 et seq.

§ 780.310 Exemption for local hand harvest laborers.

Section 13(a)(6)(C) was added to the Act by the Fair Labor Standards Amendments of 1966. The legislative history of the exemption indicates that it was intended to apply to the local worker who goes out on a temporary basis during the harvest season to harvest crops. The exemption was not intended to apply to a full-time farmworker, that is, one who earns a livelihood at farming. For instance, migrant laborers who travel from farm to farm were not intended to be within the scope of this exemption.

§ 780.311 Basic conditions of section 13(a)(6)(C).

(a) Section 13(a)(6)(C) of the Act applies to an employee who:

(1) Is employed in agriculture.

(2) Is employed as a hand harvest laborer.

(3) Is paid on a piece-rate basis.

(4) Is paid piece-rates in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment.

(5) Commutes daily from his permanent residence to the farm on which he is so employed.

(6) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(b) In order for the exemption to apply to an employee, all of the requirements must be met. Since a hand harvest laborer is normally an agricultural worker, while so engaged, such an employee would meet the basic requirement that he be employed in agriculture. Subpart B of this part contains a more detailed discussion of what constitutes employment in agriculture. The meaning and application of the remaining requirements are discussed in the following sections.

§ 780.312 "Hand harvest laborer" defined.

(a) The term hand harvest laborer for purposes of this exemption refers to farm workers engaged in harvesting by hand, or with hand tools, soil grown crops such as cotton, tobacco, grains, fruits, and vegetables. The term would not include harvesting operations performed by an employee with an electrically powered mechanical device, such as a "blueberry picking tool." "Hand-harvesting" refers only to soil-grown crops and does not include any operation involving animals, such as shearing or lambing of sheep and catching chickens. Hand-harvesting is defined as manually gathering or severing the crop from the soil, stems, or roots at its growing position in the fields. Included are integral related operations, closely related geographically and in point of time, which are performed before the transportation to concentration points on the farm.

For example:

(1) Employees who take tobacco leaves from the pickers and string them on poles by hand qualify as "hand harvest laborers" because the stringing operation is performed in the field almost simultaneously with the picking and before transportation to the concentration point on the farm (drying shed).

(2) The picking up of tomatoes by hand after hand pulling from the vines is "hand-harvesting," as it is performed where the crop is severed and prior to its transportation to the packing shed.

(b) The definition is limited to harvesting, and the performance by the hand harvester of any nonharvesting operation in the same workweek would cause the loss of the section 13(a)(6)(C) exemption.

For example:

(1) Employees who wrap tomatoes in a packing shed would not qualify, as the wrapping is a nonharvesting operation. (Shultz v. Durrence (S.D. Ga.) 63 CCH. Lab. Cas. 32,387; 19 W.H. Cases 747)

(2) Employees who hand pick small undesirable fruit prior to harvesting in order to insure a better crop would not qualify for the exemption. This is a preharvest culling operation performed as a part of the cultivation and growing operations not harvesting.

(3) Employees who chop cotton, since this is a nonharvesting operation.

§ 780.313 Piece rate basis.

The exemption provides that the employee must be paid on a piece-rate basis. To be exempt the employee must be compensated solely on piece rates during the workweek. The exemption does not apply in any workweek in which the employee is compensated on any other basis. For example, if an employee is compensated on an hourly rate for part of the week and on a piece rate for part of the week, the exemption would not be available. Also, if any pieceworker who is otherwise subject to the minimum wage provisions of the Act does not meet all the requirements set forth in this section he must be paid at least the minimum wage for each hour worked in a particular workweek, regardless of the fact he is paid on piece rate unless he is exempted by some other provision of the Act.

§ 780.314 Operations customarily * * * paid on a piece rate basis * * *

A significant test of the exemption is that the hand harvest operation "has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment." The legislative history is silent on who must customarily and generally recognize the hand harvest operation as having been paid on a piece rate basis. However, considering the context in which the term is used, such recognition must be on the part of agricultural employers and employees and other individuals in the region of employment who are familiar with farming operations and practices in the region and the method of compensation utilized in such operations and practices.

§ 780.315 Local hand harvest laborers.

(a) A requirement of the exemption is that an employee must commute each day from his permanent residence to the farm where he is employed. Thus, the exemption does not apply to a migrant worker who travels to different areas of the country during the harvesting seasons. This would be true even though the worker may remain in the area for a considerable period of time. On the other hand, if a migrant worker actually changes his place of residence and thereafter commutes daily from his permanent residence, the exemption applies from the date of the change of residence if the other tests are met.

(b) The fact that a worker may live on the farm where the operations are performed would not be a reason for disqualification. For example, if the other tests for the exemption are met, members of a tractor driver's family who reside on the farm could be employed in picking cotton within the terms of the exemption. Such family members would be considered to be commuting daily from their permanent residence despite the fact that their residence may be located on the farm at which they are employed.

§ 780.316 Thirteen-week provision.

(a) The exemption provides that an "employee must have been employed in agriculture less than 13 weeks during the preceding calendar year." For purposes of determining whether a worker has been employed in agriculture less than 13 weeks during the preceding calendar year, a week is considered to be a fixed and regularly recurring period of 168 hours consisting of seven consecutive 24-hour periods during which the employee worked at least 1 "man-day." Section 3(u) of the Act defines a man-day as "any day during which an employee performs any agricultural labor for not less than 1 hour."

(b) In defining the term "week" in this manner for purposes of section 13(a)(6)(C) (as well as section 3(e)(2)) comports with the traditional definition

of week used in administering all the other provisions of the law. On this basis, the phrase "employed in agriculture less than 13 weeks" means that an employee has spent less than 13 weeks in agricultural work, regardless of the number of hours he worked during each one of the 13 weekly units. This position recognizes and accommodates to situations where an employee works very long as well as very short hours during the week. This would accord with the legislative history of this exemption which clearly indicates that it was meant to apply only to temporary workers whose hours of work would undoubtedly vary in length, and would, thereby effectuate the legislative intent.

(c) In determining the 13-week period, not only that work for the current employer in the preceding calendar year is counted, but also that agricultural work for all employers in the previous year. It is the total of all weeks of agricultural employment by the employee for all employers in the preceding calendar year that determines whether he meets the 13-week test. In this respect a self-employed farmer who works as a hand harvest laborer during part of the year is considered to be "employed" in agriculture only during those weeks when he is an employee of other farmers. Thus, such weeks of employment are to be counted but any weeks when he works only for himself are not counted toward the 13 weeks.

(d) The 13-week test applies to each individual worker. It does not apply on a family basis. To carry the example in the preceding section further, members of a tractor driver's family who reside on the farm could be employed in picking cotton within the terms of the exemption even though the driver had been employed in agriculture as much as 13 weeks in the previous calendar year, so long as the family members themselves had not.

(e) If an employer claims this exemption, it is the employer's responsibility to obtain a statement from the employee showing the number of weeks he was employed in agriculture during the preceding calendar year. This requirement is contained in the recordkeeping regulations in § 516.33(d) of this chapter.

§ 780.317 Man-day exclusion.

Section 3(e)(2) specifically excludes from the employer's man-day total (as defined in section 3(u)) employees who qualify for exemption under section 13(a)(6)(C). (See § 780.301.) This man-day count is a basic factor in the application of the section 13(a)(6)(A) exemption. (See § 780.302 et seq.)

§ 780.318 Exemption for nonlocal minors.

(a) Section 13(a)(6)(D) of the 1966 Amendments to the Fair Labor Standards Act exempts from the minimum wage and overtime provisions "any employee employed in agriculture * * * if such employee (other than an employee described in clause (C) of this subsection) (1) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (2) is employed on the same farm as his parent or persons standing in the place of his parent, and (3) is paid at the same piece rate as employees over age 16 are paid on the same farm."

(b) It is clear from the legislative history of the amendments that the exemption was intended to apply, where the other specific tests are met, only to minors 16 years of age or under who are not "local," in the sense that they are away from their permanent home when employed in agriculture. Specifically the exemption was intended to apply in the case of the children of migrants who typically accompany their parents in harvesting and other agricultural work. (S. Rept. No. 1487, 89th Cong., second sess., to accompany H.R. 13712, pp. 9 and 10)

§ 780.319 Basic conditions of exemption.

(a) Section 13(a)(6)(D) applies to an employee engaged in agriculture who meets all of the following tests:

(1) Is not a local hand harvest laborer,

(2) Is 16 years of age or under,

(3) Is employed as a hand harvest laborer,

(4) Is paid on a piece rate basis,

(5) Is employed in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(6) Is employed on the same farm as his parent or person standing in the place of his parent, and

(7) Is paid at the same piece rate as employees over age 16 are paid on the same farms.

(b) Some of these requirements which are common to both sections 13(a)(6)(C) and 13(a)(6)(D) have already been discussed in connection with section 13(a)(6)(C) and need not be repeated. They are found in §§ 780.311 (employed in agriculture), 780.312 (hand harvest laborer), 780.313 (piece rate basis), and § 780.314 (operations * * * customarily paid on a piece rate basis). The other requirements are discussed in the following sections.

§ 780.320 Nonlocal minors.

The exemption applies only to migrant or other than local hand harvest workers 16 years of age or under who do come within the scope of section 13(a)(6)(C) (application to all local hand harvest laborers who commute daily from their permanent residences). (See § 780.315.) A local youth under the prescribed age who commutes daily from his permanent residence to the farm to perform work is not exempt under section 13(a)(6)(D). The exemption may, however, be available for the specified minors who work for short periods of several days or weeks without returning daily to their homes on farms beyond commuting distances from their permanent homes.

§ 780.321 Minors 16 years of age or under.

Section 13(a)(6)(D) by its very terms is available only to employees 16 years of age or under. Accordingly, even though all the other tests of the exemption are met, the exemption is inapplicable in the case of an employee over 16 years of age and the employer must pay to such an employee the applicable statutory minimum wage unless his operations come within the reach of some other exemption, such as section 13(a)(6)(A). Furthermore, although section 13(a)(6)(D) provides a minimum wage and overtime exemption for minors 16 years of age or under, the employer must nevertheless comply with the child labor provisions of the Act prohibiting the employment of minors in agriculture except under certain conditions and circumstances. These provisions are discussed in Part 1500, Subpart G of this title.

§ 780.322 Is employed on the same farm as his parent or persons standing in the place of his parent.

(a) The words "employed on the same farm" are accorded their natural meaning with the usual caution, however, that as in the case of all other exemptions, the exemptive language is to be construed narrowly. (See § 780.2.)

(b) Individuals who are considered as "his parent or persons standing in place of his parent" include natural parents, or any other person where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.

§ 780.323 Exemption for range production of livestock.

Section 13(a)(6)(E) which was added to the Act by the Fair Labor Standards Amendments of 1966 provides an exemption from the minimum wage and overtime requirements of the Act for any employee "employed in agriculture" if he "is principally engaged in the range production of livestock." It is apparent from the language of section 13(a)(6)(E) that the application of this exemption depends on the type of work performed by the individual employee for whom exemption is sought and on where the work is done. A determination of whether an employee is exempt therefore requires an examination of that employee's duties and where they are performed. Some employees of the employer may be exempt while others may not.

§ 780.324 Requirements for the exemption to apply.

(a) All the following conditions must be met in order for the exemption to apply to an employee:

(1) He must be "engaged in agriculture," and

(2) Be "principally engaged"

(3) On the "range"

(4) In the "production of livestock."

(b) Since the raising of livestock is included in the definition of agriculture under section 3(f) of the Act (see §§ 780.119–780.121 of Subpart B of this part), the range production of livestock would normally be deemed agriculture work, and, consequently, an employee, during this time he is engaged in such activities, would meet the basic requirement of the exemption that he be "employed in agriculture."

The following sections discuss the meaning and application of the other requirements.

§ 780.325 Principally engaged.

(a) To determine whether an employee is "principally engaged" in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee's time.

(b) Under this principle, an employee who spends more than 50 percent of his time during the year on the range in the duties designated as range production duties would be exempt. This is true even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches.

§ 780.326 On the range.

(a) For purposes of this exemption, "range" is defined generally as land that is not cultivated. It is land that produces native forage for animal consumption, and includes land that is revegetated naturally or artificially to provide a forage cover that is managed like range vegetation. "Forage" as used here means "browse" or herbaceous food that is available to livestock or game animals.

(b) The range may be on private or Federal or State land, and need not be open. Typically it is not only noncultivated land, but land that is not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Typically, also, many acres of range land are required to graze one animal unit (five sheep or one cow) for 1 month. By its nature, range production of livestock is most typically conducted over wide expanses of land, such as thousands of acres.

§ 780.327 Production of livestock.

For an employee to be engaged in the production of livestock, he must be actively taking care of the animals or standing by in readiness for that purpose. Thus, such activities as herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise assisting in the raising of livestock and in such immediately incidental duties as inspecting and repairing fences, wells, and windmills would be considered as the production of livestock. On the other hand, such work as terracing, reseeding, haying, and constructing dams, wells, and irrigation ditches would not be considered as the production of livestock within the meaning of the exemption.

§ 780.328 Meaning of livestock.

The term "livestock" includes cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm. This is further discussed in § 780.120. Turkeys or domesticated fowl are considered poultry and not livestock within the meaning of this exemption.

§ 780.329 Exempt work.

(a) The standard that must be used to determine whether the individual employee is exempt is that his primary duty must be the range production of livestock and that this duty necessitates his constant attendance on the range, on a standby basis, for such periods of time so as to make the computation of hours worked extremely difficult. The fact that an employee generally returns to his place of residence at the end of each day would not affect the application of the exemption.

(b) Thus, exempt work must be performed away from the "headquarters." The headquarters is not, however, to be confused with the "headquarters ranch." The term headquarters has reference to the place for the transaction of the business of the ranch (administrative center), as distinguished from buildings or lots used for convenience elsewhere. It is a particular location for the discharge of the management duties. Accordingly, the term "headquarters" would not embrace large acreage, but only the ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity. The balance of the "headquarters ranch" would be the "range."

(c) Furthermore, the legislative history indicates that this exemption was not intended to apply to feed lots or to any area where the stock involved would be near headquarters. Its sponsors stated that the exemption would apply only to those employees principally engaged in activities which require constant attendance on a standby basis, away from headquarters, such as herding, where the computation of hours worked would be extremely difficult. Such constant surveillance of livestock that graze and reproduce on range lands is necessary to see that the animals receive adequate care, water, salt, minerals, feed supplements, and protection from insects, parasites, disease, predators, adverse weather, etc.

(d) The man-days of labor of employees principally engaged in the range production of livestock, even though the employees are exempt from the wage and hour requirements of the Act, are included in the employer's man-day count for purposes of application of section 13(a)(6)(A). Thus, if a cattle rancher in a particular calendar quarter uses 200 man-days of such range production labor and 400 man-days of agricultural labor performed by individuals not so engaged, he is required to pay the minimum wage to the latter employees in the following year.

§ 780.330 Sharecroppers and tenant farmers.

(a) The test of coverage for sharecroppers and tenant farmers is the same as that applied under the Act to determine whether any other person is an employee or not. Certain so-called sharecroppers or tenants whose work activities are closely guided by the landowner or his agent are covered. Those individuals called sharecroppers and tenants whose work is closely directed and who have no actual discretion in controlling farm operations are in fact employees by another name. True independent-contractor sharecroppers or tenant farmers who actually control their farm operations are not employees, but if they employ other workers they may be responsible as employers under the Act.

(b) In determining whether such individuals are employees or independent contractors, the criteria laid down by the courts in interpreting the Act's definitions of employment, such as those enunciated by the Supreme Court in Rutherford Food Corporation v. McComb, are utilized. This case, as well as others, made it clear that the answer to the question of whether an individual is an employee or an independent contractor under the definitions in this Act lies in the relationship in its entirety, and is not determined by common law concepts. It does not depend upon isolated factors but on the "whole activity." An employee is one who as a matter of economic reality follows the usual path of an employee. Each case must be decided on the basis of all facts and circumstances, and as an aid in the assessment, one considers such factors as the following: (1) The extent to which the services rendered are an integral part of the principal's business; (2) the permanency of the relationship; (3) the opportunities for profit or loss; (4) the initiative, judgment, or foresight exercised by the one who performs the services; (5) the amount of investment; and (6) the degree of control which the principal has in the situation.

(c) Where a tenant or sharecropper is found to be an employee, he and any members of his family who work with him on the crop are also to be included in the 500 man-day count of the owner or operator of the farm. Thus, where a sharecropper is an employee and his wife and children help in chopping cotton, all the family members are employees of the farm owner or operator and all their man-days of work are counted.

(d) On the other hand, a sharecropper or tenant who qualifies as a bona fide independent contractor is considered the same as any other employer, and only

the man-days of agricultural labor performed by employees of such a sharecropper or tenant are counted toward the man-days used by him. If he does not meet the 500 man-day test, he is not required to pay his employees the minimum wage even though those employees are entitled to the minimum wage when working for a separate employer who met the man-day test.

§ 780.331 Crew leaders and labor contractors.

(a) Whether a crew leader or a labor contractor is the employer of the workers he supplies is a question of fact. The tests here are the same as those used to determine whether a sharecropper or tenant is an independent contractor. A crew leader who merely assembles a crew and brings them to the farm to be supervised and paid directly by the farmer, and who does the same work and receives the same pay as the crewmembers, is an employee of the farmer, and both he and his crew are counted as such and paid accordingly if the farmer is not exempt under the 500 man-day test. The situation is not significantly different if under the same circumstances, the crew is hired at so much per acre for their work. This is in effect a group piecework arrangement.

(b) The situation is different where the farmer only establishes the general manner for the work to be done. Where this is the case, the labor contractor is the employer of the workers if he makes the day-to-day decisions regarding the work and has an opportunity for profit or loss through his supervision of the crew and its output. As the employer, he has the authority to hire and fire the workers and direct them while working in the fields. Complaints by the farmer about the quality or quantity of the work or about a worker are made to the contractor or his representatives, who takes whatever action he deems appropriate. His opportunity for profit or loss comes from his control over the time and manner of performance of work by his crew and his authority to determine the wage rates paid to his workers.

(c) There is also the common and general practice of an individual who performs custom work such as crop dusting or grain harvesting and threshing or sheepshearing. In the typical case this contractor has a substantial investment in equipment and his business decisions and judgments materially affect his opportunity for profit or loss. In the overall picture, the contractor is not following the usual path of an employee, but that of an independent contractor.

For example: A sheepshearing contractor who operates in the following manner is considered an independent contractor and therefore an agricultural employer in his own right—he operates his own equipment including power supply from his own trucks or trailers, boards his shearing crew and has complete responsibility for their work and compensation, has complete charge of the sheep from the time they enter the shearing pen until they are shorn and turned out, and contracts with the rancher for the complete operation at an agreed rate per head.

(d) Where it is clear that certain agricultural operations performed on a farm are performed for the farmer by a bona fide independent contractor, the independent contractor will be tested for coverage in his own right and considered responsible for minimum wage compliance with respect to his own employees. The man-days of agricultural labor performed by employees of a bona fide independent contractor for such services are counted toward the man-days of such labor used by the independent contractor and not the farmer. On the other hand, if it appears on the facts that the contractor supplying the agricultural service is a joint-employer with the farmer of the agricultural labor used on the latter's farm, e.g., in the case of a crew leader and grower (Mitchell v. Hertzke, 234 F. (2d) 183 C.C.A. 105; Hodgson v. Okada (D. Colo.), 65 CCH Lab. Cas. 32505, 19 WH Cases 1105), the man-days of agricultural labor rendered is counted towards the man-days of such labor of each employer.

§ 780.332 Exchange of labor between farmers.

(a) Occasionally a farmer may help his neighbor with the harvest of his crop. For instance, Farmer B helps his neighbor Farmer A harvest his wheat. In return Farmer A helps Farmer B with the harvest at his farm.

(b) In a case where neighboring farmers exchange their own work under an arrangement where the work of one farmer is repaid by the labor of the other farmer and there is no monetary compensation for these services paid or contemplated, the Department of Labor would not assert that either farmer is an employee of the other.

(c) In addition, there may be instances where employees of a farmer also work for neighboring farmers during harvest time. For example, employees of Farmer A may help Farmer B with his harvest, and later, Farmer B's employees may help Farmer A. These employees would be included in the man-day count of the farmer for whom the work is performed on the day in question. Since the Act defines man-day to mean any day during which an employee performs any agricultural labor for not less than 1 hour, there may be days on which these employees work for both Farmer A and Farmer B for a "man-day." In that event they would be included for that day in the man-day count of both Farmer A and Farmer B.

Subpart E—Employment in Agriculture or Irrigation That Is Exempted From the Overtime Pay Requirements Under Section 13(b)(12)

§ 780.400 Statutory provisions.

Section 13(b)(12) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

Any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes.

§ 780.401 General explanatory statement.

(a) Section 13(b)(12) of the act contains the same wording as did section 13(a)(6) prior to the 1966 amendments. The effect of this is to provide a complete overtime exemption for any employee employed in "agriculture" who does not qualify for exemption under section 13(a)(6)(A), (B), (C), (D), and (E) of the 1966 amendments.

(b) In addition to exempting employees employed in agriculture, section 13(b)(12) also exempts from the overtime provisions of the act employees employed in specified irrigation activities. Prior to the 1966 amendments these employees were exempt from the minimum wage and overtime pay requirements of the act.

(c) For exempt employment in "agriculture," see Subpart B of this part.

§ 780.402 The general guides for applying the exemption.

(a) Like other exemptions provided by the Act, the section 13(b)(12) exemption is narrowly construed (Phillips, Inc. v. Walling, 334 U.S. 490; Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Fleming v. Swift & Co., 41 F. Supp. 825; Miller Hatcheries v. Boyer, 131 F. 2d 283; Walling v. Friend, 156 F. 2d 429; see also § 780.2 of Subpart A of this Part 780). An employer who claims the exemption has the burden of showing that it applies. (See § 780.2.) The section 13(b)(12) exemption for employment in agriculture is intended to cover all agriculture, including "extraordinary methods" of agriculture as well as the more conventional ones and large operators as well as small ones. Nevertheless, it was meant to apply only to agriculture. It does not extend to processes that are more akin to manufacturing than to agriculture. Practices performed off the farm by nonfarmers are not within the exemption, except for the irrigation activities specifically described in section 13(b)(12). Practices performed by a farmer do not come within the exemption for agriculture if they are neither a part of farming nor performed by him as an incident to or in conjunction with his own farming operations. These principles have been well established by the courts in such cases as Mitchell v. Budd, 350 U.S. 473; Maneja v. Waialua, 349 U.S. 254; Farmers Reservoir Co. v. McComb, 337 U.S. 755; Addison v. Holly Hill Fruit Products, 322 U.S. 607; Calaf v. Gonzalez, 127 F. 2d 934; Chapman v. Durkin, 214 F. 2d 363, certiorari denied, 348 U.S. 897; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n, 80 F. Supp. 953, 181 F. 2d 697.

(b) When the Congress, in the 1961 amendments, provided special exemptions for some activities which had been held not to be included in the exemption for agriculture (see Subparts F and J of this Part 780), it was made very clear that no implication of disagreement with "the principles and tests governing the application of the present

agriculture exemption as enunciated by the courts" was intended (Statement of the Managers on the Part of the House, Conference Report, H. Rept. No. 327, 87th Cong. first sess., p. 18). Accordingly, an employee is considered an exempt agricultural or irrigation employee if, but only if, his work falls clearly within the specific language of section 3(f) or section 13(b)(12).

§ 780.403 Employee basis of exemption under section 13(b)(12).

Section 13(b)(12) exempts "any employee employed in * * *." It is clear from this language that it is the activities of the employee rather than those of his employer which ultimately determine the application of the exemption. Thus the exemption may not apply to some employees of an employer engaged almost exclusively in activities within the exemption, and it may apply to some employees of an employer engaged almost exclusively in other activities. But the burden of effecting segregation between exempt and nonexempt work as between different groups of employees is upon the employer.

§ 780.404 Activities of the employer considered in some situations.

Although the activities of the individual employee, as distinguished from those of his employer, constitute the ultimate test for applying the exemption, it is necessary in some instances to examine the activities of the employer. For example, in resolving the status of the employees of an irrigation company for purposes of the agriculture exemption, the U.S. Supreme Court, found it necessary to consider the nature of the employer's activities (Farmers Reservoir Co. v. McComb, 337 U.S. 755).

The Irrigation Exemption

§ 780.405 Exemption is direct and does not mean activities are agriculture.

The exemption provided in section 13(b)(12) for irrigation activities is a direct exemption which depends for its application on its own terms and not on the meaning of "agriculture" as defined in section 3(f). This exemption was added by an amendment to section 13(a)(6) in 1949 to alter the effect of the decision of the U.S. Supreme Court in Farmers Reservoir Company v. McComb, 337 U.S. 755, so as to exclude the type of employees involved in that case from certain requirements of the Act. Congress chose to accomplish this result, not by expanding the definition of agriculture in section 3(f), but by adding a further exemption. In view of this approach, it can well be said that Congress agreed with the Supreme Court's holding that such workers are not employed in agriculture. (Goldberg v. Crowley Ridge Ass'n., 295 F. 2d 7.) Irrigation workers who are employed in any workweek exclusively by a farmer or on a farm in irrigation work which meets the requirement of performance as an incident to or in conjunction with the primary farming operations of such farmer or such farm, as previously explained, are considered as employed in agriculture under section 3(f) and may qualify for the minimum wage and overtime exemption under section 13(a)(6) or for the overtime exemption provided agricultural workers under section 13(b)(12). Where they are not so employed, they are not considered as agricultural workers (Farmers Reservoir Co. v. McComb, supra), but may qualify for the overtime exemption under section 13(b)(12) relating to irrigation work if their duties and the irrigation system on which they work come within the express language of the statute. Where this is the case, it is not material whether the employees are employed in agriculture.

§ 780.406 Exemption is from overtime only.

This exemption applies only to the overtime provisions of the Act and does not affect the minimum wage, child labor, recordkeeping, and other requirements of the Act. The minimum wage rate applicable to employees employed in connection with supplying and storing water for agricultural purposes whose exemption from the minimum wage requirements was removed by the 1966 amendments is that provided by section 6(b) of the Act.

§ 780.407 System must be nonprofit or operated on a share-crop basis.

The exemption does not apply to employees employed in the described operations on facilities of any irrigation system unless the ditches, canals, reservoirs, or waterways in connection with which their work is done meet the statutory requirement that they either be not owned or operated for profit, or be operated on a share-crop basis. The employer is paid on a share-crop basis when he receives, as his total compensation, a share of the crop of the farmers serviced.

§ 780.408 Facilities of system must be used exclusively for agricultural purposes.

Section 13(b)(12) requires for exemption of irrigation work that the ditches, canals, reservoirs, or waterways in connection with which the employee's work is done be "used exclusively for supply and storing of water for agricultural purposes." If a water supplier supplies water for other than "agricultural purposes," the exemption would not apply. For example, the exemption would not apply where a portion of its water is delivered by the supplier to a municipality to be used for general, domestic, and commercial purposes. The fact that a small amount of the water furnished for use in his farming operations is in fact used for incidental domestic purposes by the farmer on the farm does not, however, require the conclusion that the water supplied was not exclusively "for agricultural purposes" within the meaning of the irrigation exemption in section 13(b)(12). Accordingly, if otherwise applicable, the exemption is not defeated merely because the water stored and supplied through the ditches, canals, reservoirs, or waterways of the irrigation system includes a small amount which is used for domestic purposes on the farms to which it is supplied. On the other hand, if the water supplier should maintain separate facilities for storing and supplying water for domestic use, it is clear that employees employed in connection with the maintenance or operation of such facilities would not be employed in activities to which the exemption applies. Water used for watering livestock raised by a farmer is "for agricultural purposes."

§ 780.409 Employment "in connection with the operation or maintenance" is exempt.

The irrigation exemption provided by section 13(b)(12) applies to "any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways" of an irrigation system which qualifies for the exemption. The employee, to be exempt, must be employed "in connection with the operation or maintenance" of the named facilities; other employees of the irrigation system, not employed in connection with the named activities, are not exempt. The exemption may apply to employees engaged in insect, rodent, and weed control along the canals and waterways of the irrigation system.

Subpart F—Employment or Agricultural Employees in Processing Shade-Grown Tobacco; Exemption From Minimum Wage and Overtime Pay Requirements Under Section 3(a)(14)

Introductory

§ 780.500 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart F together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(14) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for certain agricultural employees engaged in the processing, prior to stemming, or shade-grown tobacco for use as cigar wrapper tobacco. As appears more fully in Subpart A, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The exemptions provided in section 13(a)(6) of the Act for employees employed in agriculture is not discussed in this subpart except in its relation to section 13(a)(14). The meaning and application of the section 13(a)(6) exemption is fully considered in Subpart D of this Part 780.

§ 780.501 Statutory provision.

Section 13(a)(14) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 of the Act and from the overtime provisions of section 7:

Any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.

§ 780.502 Legislative history of exemption.

The exemption for shade-grown tobacco workers was added to the Act by the Fair Labor Standards Amendments of 1961. The intent of the committee which inserted the provision in the amendments which were reported to the House (see H. Rept. No. 75, 87th Cong., first sess., p. 29) was to exclude from the minimum wage and overtime requirements of the Act "employees engaged prior to the stemming process in processing shade-grown tobacco for use as cigar wrapper tobacco, but only if the employees were employed in the growing and harvesting of such tobacco". The Report also pointed out that "such operations were assumed to be exempt prior to the case of Mitchell v. Budd, 350 U.S. 473 (1956), as a continuation of the agricultural process occurring in the vicinity where the tobacco was grown". The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. In that form, it would have altered the effect of the Supreme Court's decision in the case of Mitchell v. Budd, cited above, by bringing the described employees under the exemption provided for agriculture in section 13(a)(6) of the Act. (H. Rept. No. 75, p. 26, and H. Rept. No. 327, p. 17, 87th Cong., first sess.) The Conference Committee, in changing the provision to provide a separate exemption, made it clear that it was "not intended by the committee of conference to change * * * by the exemption for employees engaged in the named operations on shade-grown tobacco the application of the Act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rept. No. 327, supra, p. 18.)

§ 780.503 What determines the application of the exemption.

The application of the section 13(a)(14) exemption depends upon the nature of the work performed by the individual employee for whom exemption is sought and not upon the character of the work of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may therefore be exempt while others may not.

Requirements for Exemption

§ 780.504 Basic conditions of exemption.

Under section 13(a)(14) of the Act all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must work on "shade-grown tobacco."

(b) He must be an "agricultural employee" employed "in the growing and harvesting" of shade-grown tobacco.

(c) He must be engaged "in the processing * * * of such tobacco" and this processing must be both "prior to the stemming process" and to prepare the tobacco "for use as cigar wrapper tobacco." These requirements are discussed in the following sections of this subpart.

Shade-Grown Tobacco

§ 780.505 Definition of "shade-grown tobacco."

Shade-grown tobacco to which the exemption applies is Connecticut Valley Shade-Grown U.S. Type 61 and Georgia-Florida Shade-Grown U.S. Type 62.

§ 780.506 Dependence of exemption on shade-grown tobacco operations.

The exemption provided by section 13(a)(14) of the Act is limited to the performance of certain operations with respect to the specified commodity, shade-grown tobacco. Work in connection with any other kind of tobacco, or any other commodity, including any other farm product, is not exempt under this section. An employee must be an agricultural employee variously employed in the growing and harvesting of "shade-grown tobacco" and in the described processing of "such tobacco" in order that the section 13(a)(14) exemption may apply.

§ 780.507 "Such tobacco."

To be within the exemption, the processing activities with respect to shade-grown tobacco must be performed by an employee who has been employed in growing and harvesting "such tobacco." The term "such tobacco" clearly is limited to the specified type of tobacco named in the section, that is, shade-grown tobacco. While a literal interpretation of the term "such tobacco" might lead to a conclusion that the exemption extends only to the processing of the tobacco which the employee grew or harvested, it appears from the legislative history that the intent was to extend the exemption to the processing of such tobacco which may be viewed "as a continuation of the agricultural process, occurring in the vicinity where the tobacco was grown." (H. Rept. 75, 87th Cong., first sess., p. 26.) Thus, it appears that the term "such tobacco" has reference to the local crop of shade-grown tobacco, raised by other local growers as well as by the processor, and which is being processed as a continuation of the growing and harvesting of such crop in the vicinity.

§ 780.508 Application of the exemption.

(a) As indicated in § 780.504, an employee qualifies for exemption under section 13(a)(14) only if he is an agricultural employee employed in the growing and harvesting of shade-grown tobacco and is engaged in the processing of such tobacco. However, both operations do not have to be performed during the same workweek. Section 13(a)(14) of the Act is intended to exempt any agricultural employee from the minimum wage and overtime provisions of the Act in any workweek when he is employed in the growing and harvesting of shade-grown tobacco, irrespective of the provisions of section 13(a)(6) and whether or not in such workweek he is also engaged in the processing of the tobacco as described in section 13(a)(14). The exemption would also apply in any workweek in which the employee, who grew and harvested shade-grown tobacco, is exclusively engaged in such processing.

(b) An employee so employed in any workweek is considered to be excluded from the "employee employed in agriculture" whose exemption from the pay provisions of the Act is governed by section 13(a)(6). Therefore, his man-days of exempt labor under section 13(a)(14) in any such workweek are not to be counted as man-days of agricultural labor within the meaning of section 3(u) of the Act and to which section 13(a)(6) refers.

(c) However, since section 3(u) defines man-day to mean "any day during which an employee performs any agricultural labor for not less than 1 hour" in the case of an employee who qualifies for the exemption in some workweeks but not in others under section 13(a)(14), all such man-days of his agricultural labor in the workweeks when he is not exempt under section 13(a)(14) will be counted. In this connection, the performance of some agricultural work which does not relate to shade-grown tobacco by an agricultural employee of a grower of such tobacco will not be considered as the performance of nonexempt work outside the section 13(a)(14) exemption in any workweek in which such an employee is employed by such an employer in the growing and harvesting of such tobacco or in its processing prior to stemming, or both, and engages in other agricultural work only incidentally or to an insubstantial extent.

§ 780.509 Agriculture.

The definition of "agriculture," as contained in section 3(f) of the Act, is discussed in Subpart B of this Part 780. The principles there discussed should be referred to as guides to the meaning of the terms "agricultural employee" and "growing and harvesting" as used in section 13(a)(14).

§ 780.510 "Any agricultural employee."

The section 13(a)(14) exemption applies to "any agricultural employee" who is employed in the specified activities. The term "any agricultural employee" includes not only agricultural employees of the tobacco grower but also such employees of other farmers or independent contractors. "Any agricultural employee" employed in the growing and harvesting of shade-grown tobacco will qualify for exemption if he engages in the specified processing operations. The use of the word "agricultural" before "employee" makes it apparent that separate consideration must be given to whether an employee is an "agricultural employee" and

to whether he is employed in the specified "growing and harvesting" within the meaning of the Act.

§ 780.511 Meaning of "agricultural employee."

An "agricultural employee," for purposes of section 13(a)(14), may be defined as an employee employed in activities which are included in the definition of "agriculture" in section 3(f) of the Act (see § 780.103), and who is employed in these activities with sufficient regularity or continuity to characterize him as a person who engages in them as an occupation. Isolated or sporadic instances of engagement by an employee in activities defined as "agriculture" would not ordinarily establish that he is an "agricultural employee." His engagement in agriculture should be sufficiently substantial to demonstrate some dedication to agricultural work as a means of livelihood.

§ 780.512 "Employed in the growing and harvesting."

Section 13(a)(14) exempts processing operations on shade-grown tobacco only when performed by agricultural employees "employed in the growing and harvesting" of such tobacco. The use of the term "and" in the phrase "growing and harvesting" may be in recognition of the fact that in the raising of shade-grown tobacco the two operations are typically intermingled; however, it is not considered that the word "and" would preclude a determination on the particular facts that an employee is qualified for the exemption if he is employed only in "growing" or only in "harvesting." Employment in work other than growing and harvesting of shade-grown tobacco will not satisfy the requirement that the employee be employed in growing and harvesting, even if such work is on shade-grown tobacco and constitutes "agriculture" as defined in section 3(f) of the Act. For example, delivery of the tobacco by an employee of the farmer to the receiving platform of the bulking plant would be a "delivery to market" included in "agriculture" when performed by the farmer as an incident to or in conjunction with his farming operations (Mitchell v. Budd, 350 U.S. 473), but it would not be part of "growing and harvesting."

§ 780.513 What employment in growing and harvesting is sufficient.

To qualify for exemption the employee must be one of those who "were employed in the growing and harvesting of such tobacco" (H. Rept. No. 75, 87th Cong., First sess., p. 29) and one whose processing work could be viewed as a "continuation of the agricultural process, occurring in the vicinity where the tobacco was grown." (Ibid. p. 26.) This appears to require that such employment be in connection with the crop of shade-grown tobacco which is being processed; it appears to preclude an employee who has had no such employment in the current crop season from qualifying for this exemption even if in some past season he was employed in growing and harvesting such tobacco. Bona fide employment in growing and harvesting shade-grown tobacco would also appear to be necessary. An attempt to qualify an employee for the processing exemption by sending him to the fields for growing or harvesting work for a few hours or days would not establish the bona fide employment in growing and harvesting contemplated by the Act. It would not seem sufficient that an employee has been engaged in growing or harvesting operations only occasionally or casually or incidentally for a small fraction of his work time. (See Walling v. Haden, 153 F. 2d 196.) Employment for a significant period in the current crop season or on some regular recurring basis during this season would appear to be necessary before an agricultural employee could reasonably be described as one "employed in the growing and harvesting of shade-grown tobacco." The determination in a doubtful case will, therefore, require a careful examination and consideration of the particular facts.

§ 780.514 "Growing" and "harvesting."

The general meaning of "growing" and "harvesting" of agricultural commodities is explained in §§ 780.117 and 780.118 of Subpart B of this Part 780, where the meaning of these terms as used in the Act's definition of agriculture is fully discussed. As there indicated, these terms include the actual raising of the crop and the operations customarily performed in connection with the removal of the crops by the farmer from their growing position, but do not extend to operations subsequent to and unconnected with the actual process whereby the agricultural commodities are severed from their attachment to the soil. Thus, while transportation to a concentration point on the farm may be included, "harvesting" never extends to transportation or other operations off the farm. The "growing" of shade-grown tobacco is considered to include such work as preparing the soil, planting, irrigating, fertilizing, and other activities. This type of tobacco requires special cultivation and is grown in fields that are completely enclosed and covered with cheesecloth shade. The leaves of the plant are picked in stages, as they mature. The leaves are taken immediately to a tobacco barn, located on the farm, where they are strung on sticks and dried by heat. Before the drying process is completed, the leaves are allowed to absorb moisture. Then they are dried again. It is not until the end of this drying operation that the leaves are packed in boxes and taken from the farm to a building plant for further processing (see Mitchell v. Budd, 350 U.S. 473). Under the general principles stated above, "harvesting" of shade-grown tobacco is considered to include the removal of the tobacco leaves from the plant and moving the tobacco from the field to the drying barn on the farm, together with the performance of other work as a necessary part of such operations. Subsequent operations such as the drying of the tobacco in the barn on the farm and packing of the tobacco for transportation to the bulking plant are not included in "harvesting."

Exempt Processing

§ 780.515 Processing requirements of section 13(a)(14).

When it has been determined that an employee is an "agricultural employee employed in the growing and harvesting of shade-grown tobacco," to whom section 13(a)(14) of the Act may apply, it then becomes necessary to ascertain whether he is "engaged in the processing * * * of such tobacco, prior to the stemming process, for use as Cigar-wrapper tobacco."

§ 780.516 "Prior to the stemming process."

The exemption provided by section 13(a)(14) applies only to employees whose processing operations on shade-grown tobacco are performed "prior to the stemming process." (See H. Rept. No. 75, 87th Cong., first sess., p. 26.) This means that an employee engaged in stemming, the removal of the midrib from the tobacco leaf (McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697), or in any operations on the tobacco which are performed after stemming has begun will not come within the exemption. Stemming and all subsequent operations are nonexempt work.

§ 780.517 "For use as Cigar-wrapper tobacco."

The phrase "for use as Cigar-wrapper tobacco" limits the type of end product which may be produced by the exempt operations. As its name indicates, Cigar-wrapper tobacco is used as a Cigar wrapper and is distinguished from other types of tobacco which serve other purposes such as filler, pipe, chewing, and other kinds of tobacco. Normally, shade-grown tobacco is used only for cigar wrappers. However, if the tobacco is not being processed by the employer for such specific and limited use, the employee is not engaged in exempt processing operations.

§ 780.518 Exempt processing operations.

The processing operations under section 13(a)(14) include, but are not limited to, "drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling" of the shade-grown tobacco. As previously noted, these operations are exempt only if performed on shade-grown tobacco prior to the stemming process to prepare the tobacco for use as cigar wrapper tobacco.

§ 780.519 General scope of exempt operations.

All operations normally performed in the processing of shade-grown tobacco for use as cigar wrapper tobacco, if performed prior to the stemming process and for such use, are included in the exemption. As a whole, this processing substantially changes the physical properties and chemical content of the tobacco,

improves its color, increases its combustibility, and eliminates the rawness and harshness of the freshly cured leaf. In the process the leaves are piled in "bulks" of about 4,000 pounds each to undergo a "sweating" or fermentation" process in which temperature and humidity are carefully controlled. Proper heat control includes, among other things, breaking up the bulk, redistributing the tobacco, and adding water. Proper fermentation or aging requires the bulk to be reconstructed several times. This bulking process may last from 4 to 8 months. When the tobacco is properly dried, cured, fermented, and aged, it is moved to long tables where the leaves are individually graded and sorted, after which they are tied in bundles called "hands" of about 30 to 35 leaves each, which are then baled for shipment. Equipment required for the work may include a steam-heated plant, platforms, thermometers, bulk covers, baling boxes and presses, baling mats and packing, sorting, and grading tables. (See Mitchell v. Budd, 350 U.S. 473, 475.) Employees performing any part of this processing prior to the stemming process, including the operations named in section 13(a)(14), may come within the exemption if they are otherwise qualified and if the tobacco on which they work is being processed for use as cigar wrapper tobacco.

§ 780.520 Particular operations which may be exempt.

(a) *General.* Section 13(a)(14) lists a number of operations as being included in the processing of shade-grown tobacco. Some of these are, and others are not, themselves "processing" in the sense that performance of the operations changes the natural form of the commodity on which it is performed. All of the operations named and described in paragraph (b) of this section, however, are a necessary and integral part of the overall process of preparing shade-grown tobacco for use as cigar wrapper tobacco and, when performed as part of that process and prior to stemming of the tobacco, by an employee qualified under the terms of the section, will provide the basis for his exemption from the minimum wage and overtime provisions of the Act.

(b) *Particular operations*—(1) *Drying.* Drying includes the removal or lowering of the moisture content of the tobacco, whether by natural means or by exposure to heat from ovens, furnaces, etc.

(2) *Curing.* Curing includes removing the tobacco to the curing shed or barn and stringing the tobacco over slats.

(3) *Fermenting.* Fermenting includes the operations controlling the chemical changes which take place in the tobacco as the result of bulking and rebulking.

(4) *Bulking.* Bulking includes piling the tobacco in piles or bulks of about 4,000 pounds each for the purpose of fermenting the tobacco.

(5) *Rebulking.* Rebulking includes the breaking down of the tobacco bulks or piles and rearranging them so that the tobacco on the inside will be placed on the outside of the bulk and tobacco on the outside will be placed inside.

(6) *Sorting.* Sorting includes segregation of the tobacco leaves in connection with the grading and classifying of the cured tobacco.

(7) *Grading.* Grading includes sorting or classifying as to size and quality.

(8) *Aging.* Aging includes the curing process brought about by bulking.

(9) *Baling.* Baling includes the tying of the tobacco into "hands" and placing them in bales for shipment.

§ 780.521 Other processing operations.

The language of the section, namely, "including, but not limited to," extends the exemption for processing to include other operations in the processing of shade-grown tobacco besides those specifically enumerated. These additional operations include only those which are a necessary and integral part of preparing the shade-grown tobacco for use as cigar wrapper tobacco. These additional operations, like those enumerated in section 13(a)(14), must be performed before the tobacco has been stemmed. Stemming work and further work on the tobacco after stemming has been performed are nonexempt.

§ 780.522 Nonprocessing employees.

Only those employees who actually engaged in the growing and harvesting of shade-grown tobacco and the specified exempt processing activities are exempt. Clerical, maintenance and custodial workers are not included.

Subpart G—Employment in Agriculture and Livestock Auction Operations Under the Section 13(b)(13) Exemption

INTRODUCTORY

§ 780.600 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart G together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(13) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for certain employees who, in the same workweek, are employed by a farmer in agriculture and also in the farmer's livestock auction operations. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemptions provided in sections 13(a)(6) and 13(b)(12) of the Act for employees employed in agriculture are not discussed in this subpart except in its relation to section 13(b)(13). The meaning and application of these exemptions are fully considered in Subparts D and E of this Part 780.

§ 780.601 Statutory provision.

Section 13(b)(13) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

> Any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1).

§ 780.602 General explanatory statement.

Ordinarily, as discussed in Subparts D and E of this Part 780, an employee who in the same workweek engages in work which is exempt as agriculture under section 13(a)(6) or 13(b)(12) of the Act and also performs nonexempt work to which the Act applies is not exempt in that week (§ 780.11). Employees of a farmer are not employed in work exempt as "agriculture" while engaged in livestock auction operations in which the livestock offered at auction includes livestock raised by other farmers (Mitchell v. Hunt, 263 F. 2d 913) (C.A. 5); Hearnsberger v. Gillespie, 435 F. 2d 926 (C.A. 8). However, under section 13(b)(13) an employee who is employed by a farmer in agriculture as well as in livestock auction operations in the same workweek will not lose the overtime exemption for that workweek, if certain conditions are met. These conditions and their meaning and application are discussed in this subpart.

REQUIREMENTS FOR EXEMPTION

§ 780.603 What determines application of exemption.

The application of the section 13(b)(13) exemption depends largely upon the nature of the work performed by the individual employee for whom exemption is sought. The character of the employer's business also determine the application of the exemption. Whether an employee is exempt therefore depends upon his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt in some weeks and others may not.

§ 780.604 General requirements.

The general requirements for exemption under section 13(b)(13) are as follows:

(a) Employment of the employee "primarily" in agriculture in the particular workweek.

(b) This primary employment by a farmer.

(c) Engagement by the farmer in raising livestock.

(d) Engagement by the farmer in livestock auction operations "as an adjunct to" the raising of livestock.

(e) Payment of the minimum wage required by section 6(a)(1) of the Act for

all hours spent in livestock auction work by the employee.

These requirements will be separately discussed in the following sections of this subpart.

§ 780.605 Employment in agriculture.

One requirement for exemption is that the employee be employed in "agriculture." "Agriculture," as used in the Act, is defined in section 3(f) as follows:

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

An employee meets the tests of being employed in agriculture when he either engages in any one or more of the branches of farming listed in the first part of the above definition or performs, as an employee of a farmer or on a farm, practices incident to such farming operations as mentioned in the second part of the definition (Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755). The exemption applies to "any employee" of a farmer whose employment meets the tests for exemption. Accordingly, any employee of the farmer who is employed in "agriculture," including laborers, clerical, maintenance, and custodial employees, harvesters, dairy workers, and others may qualify for the exemption under section 13(b)(13) if the other conditions of the exemption are met.

§ 780.606 Interpretation of term "agriculture."

Section 3(f) of the Act, which defines "agriculture," has been extensively interpreted by the Department of Labor and the courts. Subpart B of this Part 780 contains those interpretations which have full application in construing the term "agriculture" as used in the 13(b)(13) exemption.

§ 780.607 "Primarily employed" in agriculture.

Not only must the employee be employed in agriculture, but he must be "primarily" so employed during the particular workweek or weeks in which the 13(b)(13) exemption is to be applied. The word "primarily" may be considered to mean chiefly or principally (Agnew v. Board of Governors, 153 F. 2d 785). This interpretation is consistent with the view, expressed by the sponsor of the exemption at the time of its adoption on the floor of the Senate (107 Cong. Rec. (daily ed., April 19, 1961) p. 5879), that the word means "most of his time." The Department of Labor will consider that an employee who spends more than one-half of his hours worked in the particular workweek in agriculture, as defined in the Act, is "primarily" employed in agriculture during that week.

§ 780.608 "During his workweek."

Section 13(b)(13) specifically requires that the unit of time to be used in determining whether an employee is primarily employed in agriculture is "during his workweek." The employee's own workweek, and not that of any other person, is to be used in applying the exemption. The employee's employment must meet the "primarily" test in each workweek in which the exemption is applied to him.

§ 780.609 Workweek unit in applying the exemption.

The unit of time to be used in determining the application of the exemption to an employee is the workweek. (See Overnight Transportation Co. v. Missel, 316 U.S. 572.) A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.610 Workweek exclusively in exempt work.

An employee who engages exclusively in a workweek in duties which come within the exemption under section 13(b)(13) and is paid in accordance with the requirements of that exemption, is exempt in that workweek from the overtime requirements of the Act.

§ 780.611 Workweek exclusively in agriculture.

In any workweek in which the employee works exclusively in agriculture, performing no duty in respect to livestock auction operations, his exemption for that week is determined by application of sections 13(a)(6) and 13(b)(12) to his activities. (See Subparts D and E of this part.)

§ 780.612 Employment by a "farmer."

A further requirement for exemption is the expressed statutory one that the employee must be employed in agriculture by a "farmer." Employment by a nonfarmer will not qualify an employee for the exemption.

§ 780.613 "By such farmer."

The employee's primary employment in agriculture during the exempt week is also required to be by "such farmer." The phrase "such farmer" refers to the particular farmer by whom the employee is employed in agriculture and who engages in the livestock auction operations as an adjunct to his raising of livestock. Even if an employee may spend more than half of his work time in a workweek in agriculture, he would not be exempt if such employment in agriculture were engaged in for various persons so that less than the primary portion of his workweek was performed in his employment in agriculture by such farmer. For example, an employee may work a 60-hour week and be employed in agriculture for 50 of those hours, of which 20 hours are worked in his employment by the farmer who is engaged in the livestock auction operations, the other 30 being performed for a neighboring farmer. Although this employee was primarily employed in agriculture during the workweek he is not exempt. His primary employment in agriculture was not by the farmer described in section 13(b)(13) as required.

§ 780.614 Definition of a farmer.

The Act does not define the term "farmer." Whether an employer is a "farmer" within the meaning of section 13(b)(13) must be determined by consideration of the particular facts, keeping in mind the purpose of the exemption. A full discussion of the meaning of the term "farmer" as used in the Act's definition of agriculture is contained in §§ 780.130–780.133. Generally, as indicated in that discussion, a farmer under the Act is one who engages, as an occupation, in farming operations as a distinct activity for the purpose of producing a farm crop. A corporation or a farmers' cooperative may be a "farmer" if engaged in actual farming of the nature and extent there indicated.

§ 780.615 Raising of livestock.

Livestock auction operations are within the 13(b)(13) exemption only when they are conducted as an adjunct to the raising of livestock by the farmer. The farmer is required to engage in the raising of livestock as a prerequisite for the exemption of an employee employed in the operations described in section 13(b)(13). Engagement by the farmer in one or more of the other branches of farming will not meet this requirement.

§ 780.616 Operations included in raising livestock.

Raising livestock includes such operations as the breeding, fattening, feeding, and care of domestic animals ordinarily raised or used on farms. A fuller discussion of the meaning of raising livestock is contained in §§ 780.119–780.122.

§ 780.617 Adjunct livestock auction operations.

The livestock auction operations referred to in section 13(b)(13) are those engaged in by the farmer "as an adjunct" to the raising of livestock. This phrase limits the relative extent to which the farmer may conduct livestock auctions and claim exemption under section 13(b)(13). To qualify under the exemption provision, the auction operations should be an established part of the farmer's raising of the livestock and subordinate to it. (Hearnsberger v. Gillespie, 435 F. 2d 926 (C.A. 8).) The auction operations should not be conducted on so large a scale as to predominate over the raising of livestock. The livestock auction should be adjunct to the farmer's raising of livestock not only when he engages in it on his own

account, but also when he joins with other farmers to hold an auction.

§ 780.618 "His own account"—"in conjunction with other farmers."

Under the terms of section 13(b)(13), the farmer may operate a livestock auction solely for his own benefit or he may join with "other farmers" to auction livestock for their mutual benefit. (See § 780.614 with regard to the definition of "farmer.") Unless the auction is conducted by the farmer alone or with others who are "farmers" the exemption does not apply.

§ 780.619 Work "in connection with" livestock auction operations.

An employee whose agricultural employment meets the tests for exemption may engage in "other" employment "in connection with" his employer's livestock auction operations under the conditions stated in section 13(b)(13). The work which an employee may engage in under the phrase "in connection with" includes only those activities which are a necessary incident to conducting a livestock auction of the limited type permitted under the exemption. Such work as transporting the livestock and caring for it, custodial, maintenance, and clerical duties are included. Work which cannot be considered necessarily incident to the livestock auction is not exempt.

§ 780.620 Minimum wage for livestock auction work.

The application of the exemption is further determined by whether another condition has been met. That condition is that the employee, in the workweek in which he engages in livestock auction activities, must be paid at a wage rate not less than the minimum rate required by section 6(a)(1) of the Act for the time spent in livestock auction work. The exemption does not apply unless there is payment for all hours spent in livestock auction work at not less than the applicable minimum rate prescribed in the Act.

EFFECT OF EXEMPTION

§ 780.621 No overtime wages in exempt week.

In a workweek in which all the requirements of the section 13(b)(13) exemption are met, the employee is exempt from the overtime requirements of section 7 for that entire workweek.

Subpart H—Employment by Small Country Elevators Within Area of Production; Exemption From Overtime Pay Requirements Under Section 13(b)(14)

INTRODUCTORY

§ 780.700 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this subpart together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(14) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for employees employed by certain country elevators "within the area of production," as defined by the Secretary of Labor in Part 536 of this chapter.

§ 780.701 Statutory provision.

Section 13(b)(14) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

> Any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm: *Provided*, That no more than five employees are employed in the establishment in such operations * * *.

§ 780.702 What determines application of the exemption.

The application of the section 13(b)(14) exemption depends on the employment of the employee by an establishment of the kind described in the section, and on such employment "within the area of production" as defined by regulation. In any workweek when an employee is employed in country elevator activities by such an establishment within the area of production, the overtime pay requirements of the Act will not apply to him.

§ 780.703 Basic requirements for exemption.

The basic requirements for exemption of country elevator employees under section 13(b)(14) of the Act are as follows:

(a) The employing establishment must—

(1) Be an establishment "commonly recognized as a country elevator," and

(2) Have not more than five employees employed in its operations as such; and

(b) The employee must—

(1) Be "employed by" such establishment, and

(2) Be employed "within the area of production," as defined by the Secretary of Labor.

All the requirements must be met in order for the exemption to apply to an employee in any workweek. The requirements in section 13(b)(14) are "explicit prerequisites to exemption" and the burden of showing that they are satisfied rests upon the employer who asserts that the exemption applies (Arnold v. Kanowsky, 361 U.S. 388). In accordance with the general rules stated in § 780.2 of Subpart A of this Part 780, this exemption is to be narrowly construed and applied only to those establishments plainly and unmistakably within its terms and spirit. The requirements for its application will be separately discussed below.

ESTABLISHMENT COMMONLY RECOGNIZED AS A COUNTRY ELEVATOR

§ 780.704 Dependence of exemption on nature of employing establishment.

If an employee is to be exempt under section 13(b)(14), he must be employed by an "establishment" which is "commonly recognized as a country elevator." If he is employed by such an establishment, the fact that it may be part of a larger enterprise which also engages in activities that are not recognized as those of country elevators (see Tobin v. Flour Mills, 185 F. 2d 596) would not make the exemption inapplicable.

§ 780.705 Meaning of "establishment."

The word "establishment" has long been interpreted by the Department of Labor and the courts to mean a distinct physical place of business and not to include all the places of business which may be operated by an organization (Phillips v. Walling, 334 U.S. 490; Mitchell v. Bekins Van and Storage Co., 352 U.S. 1027). Thus, in the case of a business organization which operates a number of country elevators (see Tobin v. Flour Mills, 185 F. 2d 596), each individual elevator or other place of business would constitute an establishment, within the meaning of the Act. Country elevators are usually one-unit places of business with, in some cases, an adjoining flat warehouse. No problem exists of determining what is the establishment in such cases. However, where separate facilities are used by a country elevator, a determination must be made, based on their proximity to the elevator and their relationship to its operations, on whether the facilities and the elevator are one or more than one establishment. If there are more than one, it must be determined by which establishment the employee is employed and whether that establishment meets the requirements of section 13(b)(14) before the application of the exemption to the employee can be ascertained (compare Mitchell v. Cammill, 245 F. 2d 207; Remington v. Shaw (W.D. Mich.), 2 WH Cases 262).

§ 780.706 Recognition of character of establishment.

A further requirement for exemption is that the establishment must be "commonly recognized" as a country elevator. The word "commonly" means ordinarily or generally and the term "recognized" means known. An elevator should be generally known by the public as a country elevator. This requirement imposes, on the establishment for whose employees exemption is sought, the obligation to demonstrate that it engages in the type of work and has the attributes which will cause the general public to know it as a country elevator. The recognition which the statute requires must be shown to exist if the employer seeks to take the benefit of the exemption (see Arnold v. Kanowsky, 361 U.S. 388, 395).

§ 780.707 Establishments "commonly recognized" as country elevators.

In determining whether a particular establishment is one that is "commonly recognized" as a country elevator—and this must be true of the particular establishment if the exemption is to apply—it should be kept in mind that the intent of section 13(b)(14) is to "exempt country elevators that market farm products, mostly grain, for farmers" (107 Cong.

Rec. (daily ed.) p. 5883). It is also appropriate to consider the characteristics and functions which the courts and government agencies have recognized as those of "country elevators" and the distinctions which have been recognized between country elevators and other types of establishments. For example, in proceedings to determine industries of a seasonal nature under Part 526 of the regulations in this chapter, "country" grain elevators, public terminal and subterminal grain elevators, wheat flour mill elevators, non-elevator-type bulk grain storing establishments, and "flat warehouses" in which grain is stored in sacks, have been recognized as distinct types of establishments engaged in grain storage. (See 24 F.R. 2584; 3581.) As the legislative history of the exemption cited above makes clear, country elevators handle "mostly grain." The courts have recognized that the terms "country elevator" and "country grain elevator" are interchangeable (the term "country house" has also been recognized as synonymous), and that there are significant differences between country elevators and other types of establishments engaged in grain storage (see Tobin v. Flour Mills, 185 F. 2d 596; Mitchell v. Sampson Const. Co. (D. Kan.) 14 WH Cases 269).

§ 780.708 A country elevator is located near and serves farmers.

Country elevators, as commonly recognized, are typically located along railroads in small towns or rural areas near grain farmers, and have facilities especially designed for receiving bulk grain by wagon or truck from farms, elevating it to storage bins, and direct loading of the grain in its natural state into railroad boxcars. The principal function of such elevators is to provide a point of initial concentration for grain grown in their local area and to handle, store for limited periods, and load out such grain for movement in carload lots by rail from the producing area to its ultimate destination. They also perform a transport function in facilitating the even and orderly movement of grain over the interstate network of railroads from the producing areas to terminal elevators, markets, mills, processors, consumers, and to seaboard ports for export. The country elevator is typically the farmer's market for his grain or the point at which his grain is delivered to carriers for transportation to market. The elevator may purchase the grain from the farmer or store and handle it for him, and it may also store and handle substantial quantities of grain owned by or pledged to the Government under a price-support program. Country elevators customarily receive, weigh, test, grade, clean, mix, dry, fumigate, store, and load out grain in its natural state, and provide certain incidental services and supplies to farmers in the locality. The foregoing attributes of country elevators have been recognized by the courts. See, for example, Mitchell v. Sampson Const. Co. (D. Kan.) 14 WH Cases 269; Tobin v. Flour Mills, 185 F. 2d 596; Holt v. Barnesville Elevator Co., 145 F. 2d 250; Remington v. Shaw (W.D. Mich.), 2 WH Cases 262.

§ 780.709 Size and equipment of a country elevator.

Typically, the establishments commonly recognized as country elevators are small. Most of the establishments intended to come within the exemption have only one or two employees (107 Cong. Rec. (daily ed.) p. 5883), although some country elevators have a larger number. (See Holt v. Barnesville Elevator Co., 145 F. 2d 250.) Establishments with more than five employees are not within the exemption. (See § 780.712.) The storage capacity of a country elevator may be as small as 6,000 bushels (see Tobin v. Flour Mills, 185 F. 2d 596) and will generally range from 15,000 to 50,000 bushels. As indicated in § 780.708, country elevators are equipped to receive grain in wagons or trucks from farmers and to load it in railroad boxcars. The facilities typically include scales for weighing the farm vehicles loaded with grain, grain bins, cleaning and mixing machinery, driers for prestorage drying of grain and endless conveyor belts or chain scoops to carry grain from the ground to the top of the elevator. The facilities for receiving grain in truckloads or wagonloads from farmers and the limited storage capacity, together with location of the elevator in or near the grain-producing area, serve to distinguish country elevators from terminal or subterminal elevators, to which the exemption is not applicable. The latter are located at terminal or interior market points, receive grain in carload lots, and receive the bulk of their grain from country elevators. Although some may receive grain from farms in the immediate areas, they are not typically equipped to receive grain except by rail. (See Tobin v. Flour Mills, supra; Mitchell v. Sampson Const. Co. (D. Kan.) 14 WH Cases 269.) It is the facilities of a country elevator for the elevation of bulk grain and the discharge of such grain into rail cars that make it an "elevator" and distinguish it from warehouses that perform similar functions in the flat warehousing, storage, and marketing for farmers of grain in sacks. Such warehouses are not "elevators" and therefore do not come within the section 13(b)(14) exemption.

§ 780.710 A country elevator may sell products and services to farmers.

Section 13(b)(14) expressly provides that an establishment commonly recognized as a country elevator, within the meaning of the exemption, includes "such an establishment which sells products and services used in the operation of a farm." This language makes it plain that if the establishment is "such an establishment," that is, if its functions and attributes are such that it is "commonly recognized as a country elevator" but not otherwise, exemption of its employees under this section will not be lost solely by reason of the fact that it sells products and services used in the operation of a farm. Establishments commonly recognized as country elevators, especially the smaller ones, not only engage in the storing of grain but also conduct various merchandising or "sideline" operations as well. They may distribute feed grains to feeders and other farmers, sell fuels for farm use, sell and treat seeds, and sell other farm supplies such as fertilizers, farm chemicals, mixed concentrates, twine, lumber, and farm hardware supplies and machinery. (See Tobin v. Flour Mills, 185 F. 2d 596; Holt v. Barnesville Elevator Co., 145 F. 2d 250). Services performed for farmers by country elevators may include grinding of feeds, cleaning and fumigating seeds, supplying bottled gas, and gasoline station services. As conducted by establishments commonly recognized as country elevators, the selling of goods and services used in the operation of a farm is a minor and incidental secondary activity and not a main business of the elevator (see Tobin v. Flour Mills, supra; Holt v. Barnesville Elevator Co., supra).

§ 780.711 Exemption of mixed business applies only to country elevators.

The language of section 13(b)(14) permitting application of the exemption to country elevators selling products and services used in the operation of a farm does not extend the exemption to an establishment selling products and services to farmers merely because of the fact that it is also equipped to provide elevator services to its customers. The exemption will not apply if the extent of its business of making sales to farmers is such that the establishment is not commonly known as a "country elevator" or is commonly recognized as an establishment of a different kind. As the legislative history of the exemption indicates, its purpose is limited to exempting country elevators that market farm products, mostly grain, for farmers who are working long workweeks and need to have the elevator facilities open and available for disposal of their crops during the same hours that are worked by the farmers. (See 107 Cong. Rec. (daily ed.) p. 5883.) The reason for the exemption does not justify its application to employees selling products and services to farmers otherwise than as an incidental and subordinate part of the business of a country elevator as commonly recognized. An establishment making such sales must be "such an establishment" to come within this exemption. An employer may, however, be engaged in the business of making sales of goods and services to farmers in an establishment separate from the one in which he provides the recognized country elevator services. In such event, the exemption of employees who work in both establishments may depend on whether the work in the sales establishment comes within another exemption provided by the Act. (See Remington v. Shaw (W.D. Mich.), 2 WH Cases 262, and infra, § 780.724.)

EMPLOYMENT OF "NO MORE THAN FIVE EMPLOYEES"

§ 780.712 Limitation of exemption to establishments with five or fewer employees.

If the operations of an establishment are such that it is commonly recognized as a country elevator, its employees may come within the section 13(b)(14) exemption provided that "no more than five employees are employed in the establishment in such operations". The exemption is intended, as explained by its sponsor, to "affect only institutions that have five employees or less" (107 Cong. Rec. (daily ed.) p. 5883). Since the Act is applied on a workweek basis, a country elevator is not an exempt place of work in any workweek in which more than five employees are employed in its operations.

§ 780.713 Determining the number of employees generally.

The number of employees referred to in section 13(b)(14) is the number "employed in the establishment in such operations". The determination of the number of employees so employed involves a consideration of the meaning of employment "in the establishment" and "in such operations" in relation to each other. If, in any workweek, an employee is "employed in the establishment in such operations" for more than a negligible period of time, he should be counted in determining whether, in that workweek, more than five employees were so employed. An employee so employed must be counted for this purpose regardless of whether he would, apart from this exemption, be within the coverage of the Act. Also, as noted in the following discussion, the employees to be counted are not necessarily limited to employees directly employed by the country elevator but may include employees directly employed by others who are engaged in performing operations of the elevator establishment.

§ 780.714 Employees employed "in such operations" to be counted.

(a) The five-employee limitation on the exemption for country elevators relates to the number of employees employed in the establishment "in such operations." This means that the employees to be counted include those employed in, and do not include any who are not employed in, the operations of the establishment commonly recognized as a country elevator, including the operations of such an establishment in selling products and services used in the operation of a farm, as previously explained.

(b) In some circumstances, an employee employed in an establishment commonly recognized as a country elevator may, during his workweek, be employed in work which is not part of the operations of the elevator establishment. This would be true, for example, in the case of an employee who spends his entire workweek in the construction of an overflow warehouse for the elevator. Such an employee would not be counted in that workweek because constructing a warehouse is not part of the operations of the country elevator but is an entirely distinct activity.

(c) Employees employed by the same employer in a separate establishment in which he is engaged in a different business, and not employed in the operations of the elevator establishment, would not be counted.

(d) Employees not employed by the elevator establishment who come there sporadically, occasionally, or casually in the course of their duties for other employers are not employed in the operations of the establishment commonly recognized as a country elevator and would not be counted in determining whether the five-employee limitation is exceeded in any workweek. Examples of such employees are employees of a restaurant who bring food and beverages to the elevator employees, and employees of other employers who make deliveries to the establishment.

§ 780.715 Counting employees "employed in the establishment."

(a) Employees employed "in the establishment," if employed "in such operations" as previously explained, are to be counted in determining whether the five-employee limitation on the exemption is exceeded.

(b) Employees employed "in" the establishment clearly include all employees engaged, other than casually or sporadically, in performing any duties of their employment there, regardless of whether they are direct employees of the country elevator establishment or are employees of a farmer, independent contractor, or other person who are suffered or permitted to work (see Act, section 3(g)) in the establishment. However, tradesmen, such as dealers and their salesmen, for example, are not employed in the elevator simply because they visit the establishment to do business there. Neither are workers who deliver, on behalf of their employers, goods used in the sideline business of the establishment to be considered employed in the elevator.

(c) The use of the language "employed in" rather than "engaged in" makes it plain also that the employees to be counted include all those employed by the establishment in its operations without regard to whether they are engaged in the establishment or away from it in performing their duties. This has been the consistent interpretation of similar language in other sections of the Act.

EMPLOYEES "EMPLOYED * * * BY" THE COUNTRY ELEVATOR ESTABLISHMENT

§ 780.716 Exemption of employees "employed * * * by" the establishment.

If the establishment is a country elevator establishment qualified for exemption as previously explained, and if the "area of production" requirement is met (see § 780.720), any employee "employed * * * by" such establishment will come within the section 13(b)(14) exemption. This will bring within the exemption employees who are engaged in duties performed away from the establishment as well as those whose duties are performed in the establishment itself, so long as such employees are "employed * * * by" the country elevator establishment within the meaning of the Act. The employees employed "by" the establishment, who may come within the exemption if the other requirements are met, are not necessarily identical with the employees employed "in the establishment in such operations" who must be counted for purposes of the five-employee limitation since some of the latter employees may be employed by another employer. (See §§ 780.712–780.715.)

§ 780.717 Determining whether there is employment "by" the establishment.

(a) No single test will determine whether a worker is in fact employed "by" a country elevator establishment. This question must be decided on the basis of the total situation (Rutherford Food Corp. v. McComb, 331 U.S. 722; U.S. v. Silk, 331 U.S. 704). Clearly, an employee is so employed where he is hired by the elevator, engages in its work, is paid by the elevator and is under its supervision and control.

(b) "Employed by" requires that there be an employer-employee relationship between the worker and the employer engaged in operating the elevator. The fact, however, that the employer carries an employee on the payroll of the country elevator establishment which qualifies for exemption does not automatically extend the exemption to that employee. In order to be exempt an employee must actually be "employed by" the exempt establishment. This means that whether the employee is performing his duties inside or outside the establishment, he must be employed in the work of the exempt establishment itself in activities within the scope of its exempt business in order to meet the requirement of actual employment "by" the establishment (see Walling v. Connecticut Co., 154 F. 2d 552).

(c) In the case of employers who operate multiunit enterprises and conduct business operations in more than one establishment (see Tobin v. Flour Mills, 185 F. 2d 596; Remington v. Shaw (W.D. Mich.) 2 WH Cases 262), there will be employees of the employer who perform central office or central warehousing activities for the enterprise or for more than one establishment, and there may be other employees who spend time in the various establishments of the enterprise performing duties for the enterprise rather than for the particular establishment in which they are working at the time. Such employees are employed by the enterprise and not by any particular establishment of the employer (Mitchell v. Miller Drugs, 255 F. 2d 574; Mitchell v. Kroger Co., 248 F. 2d 935). Accordingly, so long as they perform such functions for the enterprise they would not be exempt as employees

employed by a country elevator establishment operated as part of such an enterprise, even while stationed in it or placed on its payroll.

§ 780.718 Employees who may be exempt.

Employees employed "by" a country elevator establishment which qualifies for exemption will be exempt, if the "area of production" requirement is met, while they are engaged in any of the customary operations of the establishment which is commonly recognized as a country elevator. Included among such employees are those who are engaged in selling the elevator's goods or services, keeping its books, receiving, handling, and loading out grain, grinding and mixing feed or treating seed for farmers, performing ordinary maintenance and repair of the premises and equipment or engaging in any other work of the establishment which is commonly recognized as part of its operations as a country elevator. An employee employed by such an elevator is not restricted to performing his work inside the establishment. He may also engage in his exempt duties away from the elevator. For example, a salesman who visits farmers on their farms to discuss the storage of their grain in the elevator is performing exempt work while on such visits. It is sufficient that an employee employed by an elevator is, while working away from the establishment, doing the exempt work of the elevator. If the establishment is engaged only in activities commonly recognized as those of a country elevator and none of its employees engaged in any other activities, all the employees employed by the country elevator will come within the exemption if no more than five employees are employed in the establishment in such operations and if the "area of production" requirement is met.

§ 780.719 Employees not employed "by" the elevator establishment.

Since the exemption depends on employment "by" an establishment qualified for exemption rather than simply the work of the employee, employees who are not employed by the country elevator are not exempt. This is so even though they work in the establishment and engage in duties which are part of the services which are commonly recognized as those of a country elevator. Since they are not employed by the elevator, employees of independent contractors, farmers and others who work in or for the elevator are not exempt under section 13(b)(14) simply because they work in or for the elevator (see Walling v. Friend, 156 F. 2d 429; Mitchell v. Kroger, 248 F. 2d 935; Durkin v. Joyce Agency, 110 F. Supp. 918, affirmed sub. nom. Mitchell v. Joyce Agency, 348 U.S. 945). Thus an employee of an independent contractor who works inside the elevator in drying grain for the elevator is not exempt under this section.

Employment "Within the Area of Production"

§ 780.720 "Area of production" requirement of exemption.

(a) In addition to the requirements for exemption previously discussed, section 13(b)(14) requires that the employee employed by an establishment commonly recognized as a country elevator be "employed within the area of production (as defined by the Secretary)." Regulations defining employment within the "area of production" for purposes of section 13(b)(14) are contained in Part 536 of this chapter. All the requirements of the applicable regulations must be met in order for the exemption to apply.

(b) Under the regulations, an employee is considered to be employed within "the area of production" within the meaning of section 13(b)(14) if the country elevator establishment by which he is employed is located in the "open country or a rural community," as defined in the regulations, and receives 95 percent or more of the agricultural commodities handled through its elevator services from normal rural sources of supply within specified distances from the country elevator. A definition of "area of production" in terms of such criteria has been upheld by the U.S. Supreme Court in Mitchell v. Budd, 350 U.S. 473. Reference should be made to Part 536 of this chapter for the precise requirements of the definition.

(c) However, it is appropriate to point out here that nothing in the definition places limits on the distance from which commodities come to the elevator for purposes other than the storage of marketing of farm products. The commodities, 95 percent of which are required by definition to come from specified distances, are those agricultural commodities received by the elevator with respect to which it performs the primary concentration, storage, and marketing functions of a country elevator as previously explained (see § 780.708). This is consistent with the emphasis given, in the legislative history, to the country elevator's function of marketing farm products, mostly grain, for farmers (see 107 Cong. Rec. (daily ed.) p. 5883). Commodities brought or shipped to a country elevator establishment not for storage or for market but in connection with its secondary, incidental, or side-line functions of selling products and services used in the operation of a farm (see § 780.610) are not required to be counted in determining whether 95 percent of the agricultural commodities handled come from rural sources of supply within the specified distances.

Workweek Application of Exemption

§ 780.721 Employment in the particular workweek as test of exemption.

The period for determining whether the "area of production" requirement of section 13(b)(14) is met is prescribed in the regulations in Part 536 of this chapter. Whether or not an establishment is one commonly recognized as a country elevator must be tested by general functions and attributes over a representative period of time, as previously explained, and requires reexamination for exemption purposes only if these change. But insofar as the exemption depends for its application on the employment of employees, it applies on a workweek basis. An employee employed by the establishment is not exempt in any workweek when more than five employees "are employed in the establishment in such operations," as previously explained (see §§ 780.712–780.715). Nor is any employee within the exemption in a workweek when he is not employed "by" the establishment within the meaning of section 13(b)(14) (see §§ 780.716–780.719). This is in accordance with the general rule that the unit of time to be used in determining the application of the Act and its exemptions to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; Mitchell v. Hunt, 263 F. 2d 913; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed 181 F. 2d 697). A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.722 Exempt workweeks.

An employee performing work for an establishment commonly recognized as a country elevator is exempt under section 13(b)(14) in any workweek when he is, for the entire workweek, employed "by" such establishment, if no more than five employees are "employed in the establishment in such operations", and if the "area of production" requirement is met.

§ 780.723 Exempt and nonexempt employment.

Under section 13(b)(14), where an employee, for part of his workweek, is employed "by" an "exempt" establishment (one commonly recognized as a country elevator which has five employees or less employed in the establishment in such operations in that workweek) and the employee is, in his employment by the establishment, employed "within the area of production" as defined by the regulations, but in the remainder of the workweek is employed by his employer in an establishment or in activities not within this or another exemption provided by the Act, in the course of which he performs any work to which the Act applies, the employee is not exempt for any part of that workweek (see Mitchell v. Hunt, 263 F. 2d 913; Walalua v. Maneja, 77 F. Supp. 480; Walling v. Peacock Corp., 58 F. Supp. 880; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 181 F. 2d 697).

§ 780.724 Work exempt under another section of the Act.

Where an employee's employment during part of his workweek would qualify for exemption under section 13(b)(14) if it continued throughout the workweek, and the remainder of his workweek is spent in employment which, if it continued throughout the workweek, would qualify for exemption under another section or sections of the Act, the exemptions may be combined (see Remington v. Shaw (W.D. Mich.) 2 WH Cases 262). The employee, however, qualifies for exemption only to the extent of the exemption which is more limited in scope (see Mitchell v. Hunt, 263 F. 2d 913). For example, if part of the work is exempt from both minimum wage and overtime compensation under one section of the Act and the rest is exempt only from the overtime pay provisions under another section, the employee is exempt that week from the overtime provisions, but not from the minimum wage requirements. In this connection, attention is directed to another exemption in the Act which relates to work in grain elevators, which may apply in appropriate circumstances, either in combination with section 13(b)(14) or to employees for whom the requirements of section 13(b)(14) cannot be met. This other exemption is that provided by section 7(c). Section 7(c), which is discussed in Part 526 of this chapter, provides a limited overtime exemption for employees employed in the seasonal industry of storing grain in country grain elevators, public terminal and sub-terminal elevators, wheat flour mills, nonelevator bulk storing establishments and flat warehouses, § 526.10(b)(14) of this chapter.

Subpart I—Employment in Ginning of Cotton and Processing of Sugar Beets, Sugar-Beet Molasses, Sugarcane, or Maple Sap Into Sugar or Syrup; Exemption From Overtime Pay Requirements Under Section 13(b)(15)

Introductory

§ 780.800 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart I constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(15) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for two industries (a) for employees engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and (b) for employees engaged in the processing of sugar beets, sugar-beet molasses, sugar cane or maple sap, into sugar (other than refined sugar) or syrup. The limited overtime exemptions provided for cotton ginning and for sugar processing under sections 7(c) and 7(d) (see Part 526 of this chapter) are not discussed in this subpart.

§ 780.801 Statutory Provisions.

Section 13(b)(15) of the Fair Labor Standards Act exempts from the overtime requirements of section 7:

> Any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup.

Section 13(b)(15) supplants two exemptions that were contained in the Act prior to the Fair Labor Standards Amendments of 1966. The first is former section 13(a)(18), having identical language, which provided a complete exemption for those employed in the ginning of cotton. The second is the former section 7(c) which provided an overtime exemption for the employees of an employer engaged in sugar processing operations resulting in unrefined sugar or syrup.

§ 780.802 What determines application of the exemption.

It is apparent from the language of section 13(b)(15) that the application of this exemption depends upon the nature and purpose of the work performed by the individual employee for whom exemption is sought, and in the case of ginning of cotton on the location of the place of employment where the work is done and other factors as well. It does not depend upon the character of the business of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may be exempt while others may not.

§ 780.803 Basic conditions of exemption; first part, ginning of cotton.

Under the first part of section 13(b)(15) of the Act, the ginning of cotton, all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must be "engaged in ginning."

(b) The commodity ginned must be cotton.

(c) The ginning of the cotton must be "for market."

(d) The place of employment in which this work is done must be "located in a county where cotton is grown in commercial quantities." The following sections discuss the meaning and application of these requirements.

Ginning of Cotton for Market

§ 780.804 "Ginning" of cotton.

The term "ginning" refers to operations performed on "seed cotton" to separate the seeds from the spinnable fibers. (Moore v. Farmer's Manufacturing and Ginning Co., 51 Ariz., 378, 77 F. 2d 209; Frazier v. Stone, 171 Miss. 56, 156 So. 596). "Seed cotton" is cotton in its natural state (Burchfield v. Tanner, 142 Tex. 404, 178 S.W. 2d 681, 683) and the ginning to which section 13(b)(15) refers is the "first processing" of this agricultural commodity (107 Cong. Rec. (daily ed.) p. 5887), which converts it into the marketable product commonly known as "lint cotton" (Wirtz v. Southern Pickery Inc. (W.D. Tenn.) 278 F. Supp. 729; Mangan v. State, 76 Ala. 60, 66) by removing the seed from the lint and then pressing and wrapping the lint into bales.

§ 780.805 Ginning of "cotton."

Only the ginning of "cotton" is within the first Part of the exemption. An employee engaged in ginning of moss, for example, would not be exempt. The reconditioning of cotton waste resulting from spinning or oil mill operations is not included, since such waste is not the agricultural commodity in its natural state for whose first processing the exemption was provided. (See 107 Cong. Rec. (daily ed.) p. 5887.) The "cotton," "seed cotton," and "lint cotton" ginned by ordinary gins do not include "linter" or "Grabbot" cotton, obtained by reginning cotton seed and hard locks of cotton mixed with hulls, bolls, and other substances which could not be removed by ordinary ginning (Mississippi Levee Com'rs v. Refuge Cotton Oil Co., 91 Miss. 480, 44 So. 828, 829). Mote ginning, the process whereby raw motes (leaves, trash, sticks, dirt, and immature cotton with some cottonseed) are run through a ginning process to extract the short-fiber cotton, is not included in the ginning of cotton unless it is done as a part of the whole ginning process in one gin establishment as a continuous and uninterrupted series of operations resulting in useful cotton products including the regular "gin" bales, the "mote" bales (short-fiber cotton), and the cottonseed.

§ 780.806 Exempt ginning limited to first processing.

As indicated in § 780.804, the ginning for which the exemption is intended is the first processing of the agricultural commodity, cotton, in its natural form, into lint cotton for market. It does not include further operations which may be performed on the cottonseed or the cotton lint, even though such operations are performed in the same establishment where the ginning is done. Delinting, which is the removal of short fibers and fuzz from cottonseed, is not exempt under section 13(b)(15). It is not first processing of the seed cotton; rather, it is performed on cottonseed, usually in cottonseed processing establishments, and even if regarded as ginning (Mitchell v. Burgess, 239 F. 2d 484) it is not the ginning of cotton for market contemplated by section 13(b)(15). It may come within the overtime exemption provided in section 7(d) of the Act for certain seasonal industries. (See § 526.11(b)(1) of Part 526 of this chapter.) Compressing of cotton, which is the pressing of bales into higher density bales than those which come from the gin, is a further processing of the cotton entirely removed from ginning (Peacock v. Lubbock Compress Co., 252 F. 2d 892). Employees engaged in compressing may, however, be subject to exemption from overtime pay under section 7(c). (See § 526.10(b)(8) of Part 526 of this chapter.)

§ 780.807 Cotton must be ginned "for market."

As noted in § 780.804, it is ginning of seed cotton which converts the cotton to marketable form. Section 13(b)(15), however, provides an exemption only where the cotton is actually ginned "for market." (Wirtz v. Southern Pickery, Inc. (W.D. Tenn.) 278 F. Supp. 729.) The ginning of cotton for some other purpose is not exempt work. Cotton is not ginned "for market" if it is not to be marketed in the form in which the ginning operation leaves it. Cotton is not ginned "for market" if it is being ginned preliminary to further processing operations to be performed on the cotton by the same employer before marketing the commodity in an altered form. (Compare Mitchell v. Park (D. Minn.), 14 WH Cases 43, 36 Labor Cases 65, 191; Bush v. Wilson & Co., 157 Kans. 82, 138 P. 2d 457; Gaskin v. Clell Coleman & Sons, 2 WH Cases 977.)

Employees "Engaged In" Ginning

§ 780.808 Who may qualify for the exemption generally.

The exemption applies to "any employee engaged in" ginning of cotton. This means that the exemption may apply to an employee so engaged, no matter by whom he is employed. Employees of the gin operator, of an independent contractor, or of a farmer may come within the exemption in any workweek when all other conditions of the exemption are met. To come within the exemption, however, an employee's work must be an integral part of ginning of cotton, as previously described. The courts have uniformly held that exemptions in the Act must be construed strictly to carry out the purpose of the Act. (See § 780.2, in Subpart A of this Part 780.) No operation in which an employee engages in a place of employment where cotton is ginned is exempt unless it comes within the meaning of the term "ginning."

§ 780.809 Employees engaged in exempt operations.

Employees engaged in actual ginning operations, as described in § 780.804 will come within the exemption if all other conditions of section 13(b)(15) are met. The following activities are among those within the meaning of the term "engaged in ginning of cotton":

(a) "Spotting" vehicles in the gin yard or in nearby areas before or after being weighed.

(b) Moving vehicles in the gin yard or from nearby areas to the "suction" and reparking them subsequently.

(c) Weighing the seed cotton prior to ginning, weighing lint cotton and seed subsequent to ginning (including preparation of weight records and tickets in connection with weighing operations).

(d) Placing seed cotton in temporary storage at the gin and removing the cotton from such storage to be ginned.

(e) Operating the suction feed.

(f) Operating the gin stands and power equipment.

(g) Making gin repairs during the ginning season.

(h) Operating the press, including the handling of bagging and ties in connection with the ginning operations of that gin.

(i) Removing bales from the press to holding areas on or near the gin premises.

(j) Others whose work is so directly and physically connected with the ginning process itself that it constitutes an integral part of its actual performance.

§ 780.810 Employees not "engaged in" ginning.

Since an employee must actually be "engaged in" ginning of cotton to come within the exemption, an employee engaged in other tasks, not an integral part of "ginning" operations, will not be exempt. (See, for rule that only the employees performing the work described in the exemption are exempt, Wirtz v. Burton Mercantile and Gin Co., Inc., 234 F. Supp. 825, aff'd per curiam 338 F. 2d 414, cert. denied 380 U.S. 965; Wirtz v. elso Gin Co., Inc. (E.D. Ark.) 50 Labor Cases 31, 631, 16 WH Cases 663; Mitchell v. Stinson, 217 F. 2d 210; Phillips v. Meeker Cooperative Light and Power Ass'n., 63 F. Supp. 743, affirmed 158 F. 2d 698; Jenkins v. Durkin, 208 F. 2d 941; Heaburg v. Independent Oil Mill, Inc., 46 F. Supp. 751; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969.) The following activities are among those not within the meaning of the term "engaged in ginning of cotton":

(a) Transporting seed cotton from farms or other points to the gin.

(b) General maintenance work (as opposed to operating repairs).

(c) General office and custodial duties.

(d) "Watching" duties.

(e) Working in the seed house.

(f) Transporting seed, hulls, and ginned bales away from the gin.

(g) Any activity performed during the "off-season."

County Where Cotton is Grown in Commercial Quantities

§ 780.811 Exemption dependent upon place of employment generally.

Under the first part of section 13(b)(15), if the employee's work meets the requirements for exemption, the location of the place of employment where he performs it will determine whether the exemption is applicable. This location is required to be in a county where cotton is grown in commercial quantities. The exemption will apply, however, to an employee who performs such work in "any" place of employment in such a county. The place of employment in which he engages in ginning need not be an establishment exclusively or even principally devoted to such operations; nor is it important whether the place of employment is on a farm or in a town or city in such a county, or whether or to what extent the cotton ginned there comes from the county in which the ginning is done or from nearby or distant sources. It is enough if the place of employment where the employee is engaged in ginning cotton for market is "located" in such a county.

§ 780.812 "County."

As used in the section 13(b)(15) exemption, the term "county" refers to the political subdivision of a State commonly known as such, whether or not such a unit bears that name in a particular State. It would, for example, refer to the political subdivision known as a "parish" in the State of Louisiana. A place of employment would not be located in a county, within the meaning of the exemption, if it were located in a city which, in the particular State, was not a part of any county.

§ 780.813 "County where cotton is grown."

For the exemption to apply, the employee must be ginning cotton in a place of employment in a county where cotton "is grown" in the described quantities. It is the cotton grown, not the cotton ginned in the place of employment, to which the quantity test is applicable. The quantities of cotton ginned in the county do not matter, so long as the requisite quantities are grown there.

§ 780.814 "Grown in commercial quantities."

Cotton must be "grown in commercial quantities" in the county where the place of employment is located if an employee ginning cotton in such place is to be exempt under section 13(b)(15). The term "commercial quantities" is not defined in the statute, but in the cotton-growing areas of the country there should be little question in most instances as to whether commercial quantities of cotton are grown in the county where the ginning is done. If it should become necessary to determine whether commercial quantities are grown in a particular county, it would appear appropriate in view of crop-year variations to consider average quantities produced over a representative period such as 5 years. On the question of whether the quantities grown are "commercial" quantities, the trade understanding of what are "commercial" quantities of cotton would be important. It would appear appropriate also to measure "commercial" quantities in terms of marketable lint cotton in bales rather than by acreage or amounts of seed cotton grown, since seed cotton is not a commercially marketable product (Mangan v. State, 76 Ala. 60). Also, production of a commodity in "commercial" quantities generally involves quantities sufficient for sale with a reasonable expectation of some return to the producers in excess of costs (Bianco v. Hess (Ariz.), 339 P. 2d 1038; Nystel v. Thomas (Tex. Civ. App.) 42 S.W. 2d 168).

§ 780.815 Basic conditions of exemption; second part, processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap.

Under the second part of section 13(b)(15) of the Act, the following conditions must be met in order for the exemption to apply to an employee:

(a) He must be engaged in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap.

(b) The product of the processing must be sugar (other than refined sugar) or syrup.

§ 780.816 Processing of specific commodities.

Only the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap is within the exemption. Operations performed on commodities other than those named are not exempt under this section even though they result in the production of unrefined sugar or syrup. For example, sorghum cane or refinery syrup (which is a byproduct of refined syrup) are not named commodities and employees engaged in processing these products are not exempt under this section even though the resultant product is raw sugar. The loss of exemption would obtain for the same reason for employees engaged in processing sugar, glucose, or ribbon cane syrup into syrup.

§ 780.817 Employees engaged in processing.

Only those employees who are engaged in the processing will come within the exemption. The processing of sugarcane to which the exemption applies and in which the employee must be engaged in order to come within it is considered to begin when the processor receives the cane for processing and to end when the cane is processed "into sugar (other than refined sugar) or syrup." Employees engaged in the following activities of a sugarcane processing mill are considered to be engaged in "the processing of" the sugarcane into the named products, within the meaning of the exemption:

(a) Loading of the sugarcane in the field or at a concentration point and hauling the cane to the mill "if performed by employees of the mill." (Such activities performed by employees of some other employer, such as an independent contractor, are not considered to be within the exemption.)

(b) Weighing, unloading, and stacking the cane at the mill yard.

(c) Performing sampling tests (such as a trash test or sucrose content test) on the incoming cane.

(d) Washing the cane, feeding it into the mill crushers and crushing.

(e) Operations on the extracted cane juice in the making of raw sugar and molasses: Juice weighing and measurement, heating, clarification, filtration, evaporating, crystallization, centrifuging, and handling and storing the raw sugar or molasses at the plant during the grinding season.

(f) Laboratory analytical and testing operations at any point in the processing or at the end of the process.

(g) Loading out raw sugar or molasses during the grinding season.

(h) Handling, baling, or storing bagasse during the grinding season.

(i) Firing boilers and other activities connected with the overall operation of the plant machinery during grinding operations, including cleanup and maintenance work and day-to-day repairs. (This includes shop employees, mechanics, electricians, and employees maintaining stocks of various items used in repairs.)

§ 780.818 Employees not engaged in processing.

Employees engaged in operations which are not an integral part of processing of the named commodities will not come within the exemption. The following activities are not considered exempt under section 13(b)(15):

(a) Office and general clerical work.

(b) Feeding and housing millhands and visitors (typically this is called the "boarding house").

(c) Hauling raw sugar or molasses away from the mill.

(d) Any work outside the grinding season.

§ 780.819 Production must be of unrefined sugar or syrup.

The second part of the section 13(b)(15) exemption is specifically limited to the production "of sugar (other than refined sugar) or syrup." The production of "refined sugar" a term which is commonly understood to refer to the refinement of "raw sugar" is expressly excluded. Thus, the exemption does not apply to the manufacture of sugar that is produced by melting sugar, purifying the melted sugar solution through a carbon medium process and the recrystallization of the sugar from this solution. Nor does the exemption apply to the processing of cane syrup into refined sugar or to the further processing of sugar, as for example, beet sugar into powdered or liquid sugar.

Subpart J—Employment In Fruit and Vegetable Harvest Transportation; Exemption From Overtime Pay Requirements Under Section 13(b)(16)

Introductory

§ 780.900 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart J together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(16) of the Fair Labor Standards Act of 1938, as amended. This section provides exemption from the overtime pay provisions of the Act for employees engaging in specified transportation activities when fruits and vegetables are harvested. As appears more fully in Subpart A of this part, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemption provided in sections 13(a)(6) and 13(b)(12) of the Act for employees employed in agriculture, are not discussed in this subpart except in their relation to section 13(b)(16). The meaning and application of these exemptions are fully considered in Subparts D and E, respectively, of this Part 780.

§ 780.901 Statutory provisions.

Section 13(b)(16) of the Act exempts from the overtime provisions of section 7:

> Any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables.

§ 780.902 Legislative history of exemption.

Since the language of section 13(b)(16) and its predecessor, section 13(a)(22) is identical, the legislative history of former section 13(a)(22) still retains its pertinency and vitality. The former section 13(a)(22) was added to the Act by the Fair Labor Standards Amendments of 1961. The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. It would have altered the effect of holdings of the courts that operations such as those described in the amendment are not within the agriculture exemption provided by section 13(a)(6) when performed by employees of persons other than the farmer. (Chapman v. Durkin, 214 F. 2d 360, certiorari denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363, certiorari denied, 348 U.S. 897.) The amendment was offered to exempt operations which, in the sponsor's view, were meant to be exempt under the original Act. (See 107 Cong. Rec. (daily ed.) p. 4523.) The Conference Committee, in changing the provision to make it a separate exemption made it clear that it was "not intended by the committee of conference to change by this exemption (for the described transportation employees) * * * the application of the Act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rept. No. 327, 87th Cong., first session, p. 18.)

§ 780.903 General scope of exemption.

The exemption provided by section 13(b)(16) is in two parts, subsection (A), which exempts employees engaged in the described transportation and preparation for transportation of fruits or vegetables, and subsection (B) which exempts employees engaged in the specified transportation of employees who harvest fruits or vegetables. The transportation and preparation for transportation of fruits and vegetables must be from the farm to a place of first processing or first marketing located in the same State where the farm is located; the transportation of harvesters must be between the farm and a place located in the same State as the farm.

§ 780.904 What determines the exemption.

The application of the exemption provided by section 13(b)(16) depends on the nature of the employee's work and not on the character of the employer's business. An employee is not exempt in any workweek unless his employment in that workweek meets all the requirements for exemption. To determine whether an employee is exempt an examination should be made of the duties which that employee performs. Some employees of the employer may be exempt and others may not.

§ 780.905 Employers who may claim exemption.

A nonfarmer, as well as a farmer, who has an employee engaged in the operations specified in section 13(b)(16) may take advantage of the exemption. Employees of contractual haulers, packers, processors, wholesalers, "bird-dog" operators, and others may qualify for exemption. If an employee is engaged in the specified operations, the exemption will apply "whether or not" these operations are "performed by the farmer" who has grown the harvested fruits and vegetables. Where such operations are performed by the farmer, the engagement by his employee in them will provide a basis for exemption under section 13(b)(16) without regard to whether the farmer is performing the operations as an incident to or in conjunction with his farming operations.

EXEMPT OPERATIONS ON FRUITS OR VEGETABLES

§ 780.906 Requisites for exemption generally.

Section 13(b)(16), in clause (A), provides an exemption from the overtime pay provision of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged "in the transportation and preparation for transportation of fruits and vegetables"; and

(b) Such transportation must be transportation "from the farm"; and

(c) The destination to which the fruits or vegetables are transported must be "a place of first processing or first marketing"; and

(d) The transportation must be from the farm to such destination "within the same State".

§ 780.907 "Fruits or vegetables."

The exempt operations of preparing for transportation and transporting must be performed with respect to "fruits or vegetables." The intent of section 13(b)(16) is to exempt such operations on fruits or vegetables which are "just-harvested" and still in their raw and natural state. As explained at the time of adoption of the amendment on the floor of the House, the exemption was intended to eliminate the difference in treatment of farmers and nonfarmers with respect to exemption of such "handling or hauling of fruit or vegetables in their raw or natural state." (See 107 Cong. Rec. (daily ed.) p. 4523.) Transporting and preparing for transportation other farm products which are not fruits or vegetables are not exempt under section 13(b)(16). For example, operations on livestock, eggs, tobacco, or poultry are nonexempt. Sugar cane is not a fruit or vegetable for purposes of this exemption (Wirtz v. Osceola Farms Co. 372 F. 2d 584).

§ 780.908 Relation of employee's work to specified transportation.

In order for the exemption to apply to an employee, he must be engaged "in the transportation and preparation for transportation" of the just-harvested fruits or vegetables from the farm to the specified places within the same State. Engagement in other activities is not exempt work. The employee must be actually engaged in the described operations. The exemption is not available for other employees of the employer, such as office, clerical, and maintenance workers.

§ 780.909 "Transportation."

"Transportation," as used in section 13(b)(16), refers to the movement by any means of conveyance of fruits or vegetables from the farm to a place of first processing or first marketing in the same State. It includes only those activities which are immediately necessary to move the fruits or vegetables to the specified points and the return trips. Drivers, drivers' helpers, loaders, and checkers perform work which is exempt. Transportation ends with delivery at the receiving platform of the place to which the fruits or vegetables are transported. (Mitchell v. Budd, 350 U.S. 473.) Thus, unloading at the delivery point by employees who did not transport the commodities would not be a part of the transportation activities under section 13(b)(16).

§ 780.910 Engagement in transportation and preparation.

Since transportation and preparation for transportation are both exempt activities, an employee who engages in both is performing exempt work. In referring to "the transportation and preparation for transportation" of the fruits or vegetables, the statute recognizes the two activities as interrelated parts of the single task of moving the commodities from the farm to the designated points. Accordingly, the word "and" between the words "transportation" and "preparation" is not considered to require that any employee be employed in both parts of the task in order to be exempt. The exemption may apply to an employee engaged either in transporting or preparing the commodities for transportation if he otherwise qualifies under section 13(b)(16).

§ 780.911 Preparation for transportation.

The "preparation for transportation" of fruits or vegetables includes only those activities which are necessary to prepare the fruits or vegetables for transportation from the farm to the places described in section 13(b)(16). These preliminary activities on the farm will vary with the commodity involved, with the means of the transportation to be used, and with the nature of operations to be performed on the commodity after delivery.

§ 780.912 Exempt preparation.

The following operations, if required in order to move the commodities from the farm and to deliver them to a place of first marketing or first processing, are considered preparation for transportation: Assembling, weighing, placing the fruits or vegetables in containers such as lugs, creates, boxes or bags, icing, marking, labeling or fastening containers, and moving the commodities from storage or concentration areas on the farm to loading sites.

§ 780.913 Nonexempt preparation.

(a) *Retail packing.* Since the exemption, as expressly stated in section 13(b)(16), includes the transportation of the fruits or vegetables only to places of first marketing or first processing, packing or preparing for retail or further distribution beyond the place of first processing or first marketing is not exempt as "preparation for transportation." (Schultz v. Durrence (D. Ga.), 19 WH Cases 747, 63 CCH Lab. Cas. secs. 32, 387.)

(b) *Preparation for market.* No exemption is provided under section 13(b)(16) for operations performed on the farm in preparation for market (such as ripening, cleaning, grading, or sorting) rather than in preparation for the transportation described in the section. Exemption, if any, for these activities should be considered under sections 13(a)(6) and 13(b)(12). (See Subparts D and E of this Part 780.)

(c) *Processing or canning.* Processing is not exempt preparation for transportation. Thus, the canning of fruits or vegetables is not under section 13(b)(16).

§ 780.914 "From the farm."

The exemption applies only to employees whose work relates to transportation of fruits or vegetables "from the farm." The phrase "from the farm" makes it clear that the preparation of the fruits or vegetables should be performed on the farm and that the first movement of the commodities should commence at the farm. A "farm" has been interpreted under the Act to mean a tract of land devoted to one or more of the primary branches of farming outlined in the definition of "agriculture" in section 3(f) of the Act. These expressly include the cultivation and tillage of the soil and the growing and harvesting of any agricultural or horticultural commodities.

§ 780.915 "Place of first processing."

Under section 13(b)(16) the fruits or vegetables may be transported to only two types of places. One is a "place of first processing", which includes any place where canning, freezing, drying, preserving, or other operations which first change the form of the fresh fruits or vegetables from their raw and natural state are performed. (For overtime

exemption applicable to "first processing," see Part 526 of this chapter.) A plant which grades and packs only is not a place of first processing (Walling v. DeSoto Creamery and Produce Co., 51 F. Supp. 938). However, a packer's plant may qualify as a place of first marketing. (See § 780.916.)

§ 780.916 "Place of * * * first marketing."

A "place of * * * first marketing" is the second of the two types of places to which the freshly harvested fruits or vegetables may be transported from the farm under the exemption provided by section 13(b)(16). Typically, a place of first marketing is a farmer's market of the kind to which "delivery to market" is made within the meaning of section 3(f) of the Act when a farmer delivers such commodities there as an incident to or in conjunction with his own farming operations. Under section 13(b)(16), of course, there is no requirement that the transportation be performed by or for a farmer or as an incident to or in conjunction with any farming operations. A place of first marketing may be described in general terms as a place at which the freshly harvested fruits or vegetables brought from the farm are first delivered for marketing, such as a packing plant or an establishment of a wholesaler or other distributor, cooperative marketing agency, or processor to which the fruits or vegetables are first brought from the farm and delivered for sale. A place of first marketing may also be a place of first processing (see Mitchell v. Budd, 350 U.S. 473) but it need not be. The "first place of packing" to which the just-harvested fruits or vegetables are transported from the farm is intended to be included. (See 107 Cong. Rec. (daily ed.) p. 4523.) Transportation to places which are not first processing or first marketing places is not exempt.

§ 780.917 "Within the same State."

To qualify for exemption under section 13(b)(16), the transportation of the fruits or vegetables must be made to the specified places "within the same State" in which the farm is located. Transportation is made to a place "within the same State" when the commodities are taken from the farm, hauled and delivered within the same State to first markets or first processors for sale or processing at the place of delivery. The exemption is not provided for transportation to any place of first marketing or first processing across State lines and does not apply to any part of the transportation within the State of fruits or vegetables destined for a place in another State at which they are to be first marketed or first processed. Transportation from the farm to an intermediate point in such a journey located within the same State would not qualify for exemption; it would make no difference that the intermediate point is a place of first marketing or first processing for other fruits or vegetables if it is not actually such for the fruits or vegetables being transported. On the other hand, where the place to which fruits or vegetables are transported from the farm within the same State is actually the place of first marketing or first processing of those very commodities, transportation of the goods across State lines by the first-market operator or first processor, after such delivery to him within the State, does not affect the nature of the delivery to him as one made within the State.

Exempt Transportation of Fruit or Vegetable Harvest Employees

§ 780.918 Requisites for exemption generally.

Section 13(b)(16), in clause (B), provides an exemption from the minimum wage and overtime pay provisions of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged "in transportation" of harvest workers; and

(b) The harvest workers transported must be "persons employed or to be employed in the harvesting of fruits or vegetables"; and

(c) The employee's transportation of such harvest workers must be "between the farm and any point within the same State."

§ 780.919 Engagement "in transportation" of harvest workers.

In order for the exemption to apply, the employees must be engaged "in transportation" of the specified harvest workers between the points stated in the statute. Actual engagement "in transportation" of such workers is required. Engagement in other activities is not exempt work. Drivers, driver's helpers, and others who are engaged in the actual movement of the persons transported may qualify for the exemption. Office employees, garage mechanics, and other employees of the employer who may perform supporting activities but do not engage in the actual transportation work do not come within the exemption. There is no restriction in the statute as to the means of conveyance used; the exempt transportation may be by land, air, or water in any vehicle or conveyance appropriate for the purpose. Employees of any employer who are engaged in the specified transportation activities may qualify for exemption; it is not necessary that the transportation be performed by the farmer. (See § 780.905.)

§ 780.920 Workers transported must be fruit or vegetable harvest workers.

Clause (B) of section 13(b)(16) exempts only those transportation employees who are engaged in transportation "of persons employed or to be employed in the harvesting of fruits or vegetables." Transportation of harvest workers is not exempt unless the workers are fruit and vegetable harvest workers; transportation of workers employed or to be employed in harvesting other commodities is not exempt work under section 13(b)(16). Wirtz v. Osceola Farms Co., 372 F. (2d) 584 (C.A. 5). Nor does the exemption apply to the transportation of persons for the purpose of planting or cultivating any crop, whether or not it is a fruit or a vegetable crop.

§ 780.921 Persons "employed or to be employed" in fruit or vegetable harvesting.

The exemption applies to the transportation of persons "employed or to be employed" in the harvesting of fruits or vegetables. Included in this phrase are persons who at the time of transportation are currently employed in harvesting fruits or vegetables and others who, regardless of their occupation at such time, are being transported to be employed in such harvesting. The conveying of persons to a farm from a factory, packinghouse or processing plant would be exempt where their transportation is for the purpose of their employment in harvesting the named commodities. On the other hand, the transportation of harvest workers, who have been employed in the fruit or vegetable harvest, to such a plant for the purpose of their employment in the plant would not be exempt. The transportation must come within the intended scope of section 13(b)(16) which is to provide exemption for "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. daily ed. p. 4523).

§ 780.922 "Harvesting" of fruits or vegetables.

Only transportation of employees employed or to be employed in the "harvesting" of fruits or vegetables is exempt under clause (B) of section 13(b)(16). As indicated in § 780.920, such harvest workers do not include employees employed or to be employed in planting or cultivating the crop. Nor do they include employees employed or to be employed in operations subsequent to harvesting, even where such operations constitute "agriculture" within the definition in section 3(f) of the Act. "Harvesting" refers to the removal of fruits or vegetables from their growing position in the fields, and as explained in § 780.118 of this part, includes the operations customarily performed in connection with this severance of the crops from the soil (see Vives v. Serralles, 145 F. 2d 552), but does not extend to operations subsequent to and unconnected with the actual severance process or to operations performed off the farm. It may include moving the fruits or vegetables to concentration points on the farm, but would not include packingshed or other operations performed in preparation for market rather than as part of harvesting, such as ripening, cleaning, grading, sorting, drying, and storing. If the workers are employed or to be employed in "harvesting", it does not matter for purposes of the exemption whether a farmer or someone else employs them or does the harvesting. It is the character of their employment as "harvesting" and not the identity of their employer or the owner of the crop which determines whether their transportation to and from the farm will provide a basis

for exemption of the transportation of employees.

§ 780.923 "Between the farm and any point within the same State".

The transportation of fruit or vegetable harvest workers is permitted "between the farm and any point within the same State". The exempt transportation of such harvest workers therefore includes their movement to and from the farm (see 107 Cong. Rec. (daily ed.) p. 4523). Such transportation must, however, be from or to points "within the same State" in which the farm is located. Crossing of State lines is not contemplated. Thus, the exemption would not apply to day-haul transportation of fruit or vegetable harvest workers between a town in one State and farms located in another State. Also, the intent to exempt "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. (daily ed.) p. 4523) within a single State would not justify exemption of the transportation of workers from one State to another to engage in harvest work in the latter State. The exemption does not apply to transportation of persons on any trip, or any portion of a trip, in which the point of origin or point of destination is in another State. Subject to these limitations, however, where employees are being transported for employment in harvesting they may be picked up in any place within the State, including other farms, packing or processing establishments, factories, transportation terminals, and other places. The broad term "any point" must be interpreted in the light of the purpose of the exemption to facilitate the harvesting of fruits or vegetables. Transportation from a farm to "any point" within the same State (such as a factory or processing plant) where some other purpose than harvesting is served is not exempt.

Subpart K—Employment of Homeworkers in Making Wreaths; Exemption from Minimum Wage, Overtime Compensation, and Child Labor Provisions Under Section 13(d)

§ 780.1000 Scope and significance of interpretative bulletin.

Subpart A of this Part 780 and this Subpart K together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(d) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage, overtime pay, and child labor provisions of the Act for certain homeworkers employed in making wreaths from evergreens and in harvesting evergreens and other forest products for use in making wreaths. Attention is directed to the fact that a limited overtime exemption for employees employed in the decoration greens industry is provided under section 7(c) of the Act (see Part 526 of this chapter). The section 7(c) exemption is not limited to homeworkers.

§ 780.1001 General explanatory statement.

Workers in rural areas sometimes engage, as a family unit, around the Christmas holidays, in gathering evergreens and making them into wreaths in their homes. Such workers, under well-settled interpretations by the Department of Labor and the courts, have been held to be employees of the firm which purchases the wreaths and furnishes the workers with wire used in making such wreaths.

Requirements for Exemption

§ 780.1002 Statutory requirements.

Section 13(d) of the Fair Labor Standards Act exempts from the minimum wage provisions of section 6, the overtime requirements of section 7 and the child labor restrictions of section 12:

> Any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

§ 780.1003 What determines the application of the exemption.

The application of this exemption depends on the nature of the employee's work and not on the character of the employer's business. To determine whether an employee is exempt an examination should be made of the activities which that employee performs and the conditions under which he performs them. Some employees of the employer may be exempt and others may not.

§ 780.1004 General requirements.

The general requirements of the exemption are that:

(a) The employee must be a homeworker;

(b) The employee must be engaged in making wreaths as a homeworker;

(c) The wreaths must be made principally of evergreens;

(d) Any harvesting of the evergreens and other forest products by the homeworkers must be for use in making the wreaths by homeworkers.

§ 780.1005 Homeworkers.

The exemption applies to "any homeworker." A homeworker within the meaning of the Act is a person who works for an employer in or about a home, apartment, tenement, or room in a residential establishment.

§ 780.1006 In or about a home.

Whether the work of an employee is being performed "in or about a home," so that he may be considered a homeworker, must be determined on the facts in the particular case. In general, however the phrase "in or about a home" includes any home, apartment, or other dwelling place and surrounding premises, such yards, garages, sheds or basements. A convent, orphanage or similar institution is considered a home.

§ 780.1007 Exemption is inapplicable if wreath-making is not in or about a home.

The section 13(d) exemption does not apply when the wreaths are made in or about a place which is not considered a "home." Careful consideration is required in many cases to determine whether work is being performed in or about a home. Thus, the circumstances under which an employee may engage in work in what ostensibly is a "home" may require the conclusion, on an examination of all the facts, that the work is not being performed in or about a home within the intent of the term and for purposes of section 13(d) of the Act.

§ 780.1008 Examples of places not considered homes.

The following are examples of workplaces which, on examination, have been considered not to be a "home":

(a) Living quarters allocated to and regularly used solely for production purposes, where workers work regular schedules and are under constant supervision by the employer, are not considered to be a home.

(b) While a convent, orphanage or similar institution is considered a home, an area in such place which is set aside for and used for sewing or other productive work under supervision is not a home.

(c) Where an employee performs work on wreaths in a home and also engages in work on the wreaths for the employer during that workweek in a factory, he is not exempt in that week, since some of his work is not performed in a home.

§ 780.1009 Wreaths.

The only product which may be produced under the section 13(d) exemption by a homeworker is a wreath having no less than the specified evergreen content. The making of a product other than a wreath is nonexempt even though it is made principally of evergreens.

§ 780.1010 Principally.

The exemption is intended to apply to the making of an evergreen wreath. Such a wreath is one made "principally" of evergreens. "Principally" means chiefly, in the main or mainly (Hartford Accident and Indemnity Co. v. Casualty Underwriters Insurance Co., 130 F. Supp. 56). A wreath is made "principally" of evergreens when it is comprised mostly of evergreens. For example, where a wreath is composed of evergreens and other kinds of material, the evergreens should comprise a greater part of the wreath than all the other materials together, including materials such as frames, stands, and wires. The principal portion of a wreath may consist of any one or any combination of the evergreens listed in section 13(d), including "other evergreens." The making of wreaths in which natural evergreens are a secondary component is not exempt.

§ 780.1011 **Evergreens.**

The material which must principally be used in making the wreaths is listed as "natural holly, pine, cedar, or other evergreens." Other plants or materials cannot be used to satisfy this requirement.

§ 780.1012 **Other evergreens.**

The "other evergreens" of which the wreath may be principally made include any plant which retains its greenness through all the seasons of the year, such as laurel, ivy, yew, fir, and others. While plants other than evergreens may be used in making the wreaths, such plants, whether they are forest products cultivated plants, cannot be considered as part of the required principal evergreen component of the wreath.

§ 780.1013 **Natural evergreens.**

Only "natural" evergreens may comprise the principal part of the wreath. The word "natural" qualifies all of the evergreens listed in the section, including "other evergreens." The term "natural" means that the evergreens at the time they are being used in making a wreath must be in the raw and natural state in which they have been harvested. Artificial evergreens (Herring Magic v. U.S., 258 F. 2d 197; Cal. Casualty Indemnity Exchange v. Industrial Accident Commission of Cal. 90 P. 2d 289) or evergreens which have been processed as by drying and spraying with tinsel or by other means are not included. It is immaterial whether the natural evergreen used in making a wreath has been cultivated or is a product of the woods or forest.

§ 780.1014 **Harvesting.**

The homeworker is permitted to harvest evergreens and other forest products to be used in making the wreath. The word "harvesting" means the removal of evergreens and other forest products from their growing positions in the woods or forest, including transportation of the harvested products to the home of the homeworker and the performance of other duties necessary for such harvesting.

§ 780.1015 **Other forest products.**

The homeworker may also harvest "other forest products" for use in making wreaths. The term "other forest products" means any plant of the forest and includes, of course, deciduous plants as well.

§ 780.1016 **Use of evergreens and forest products.**

Harvesting of evergreens and other forest products is exempt only when these products will be "used in making such wreaths." The phrase "used in making such wreaths" places a definite limitation on the purpose for which evergreens may be harvested under section 13(d). Harvesting of these materials for a use other than making wreaths is nonexempt. Also, such harvesting is nonexempt when the evergreens are used for wreathmaking by persons other than the homeworkers (see Mitchell v. Hunt, 263 F. 2d 913). For example, harvesting of evergreens for sale or distribution to an employer who uses them in his factory to make wreaths is not exempt.

Signed at Washington, D.C., this 13th day of June 1972.

HORACE E. MENASCO,
Administrator,
Wage and Hour Division.

[FR Doc.72-9155 Filed 6-16-72;8:48 am]

federal register

SATURDAY, JUNE 17, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 118

PART III

DEPARTMENT OF AGRICULTURE

■

Agricultural Marketing Service

■

Standards for Rough, Brown, and Milled Rice

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

Standards for Rough, Brown, and Milled Rice

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, 60 Stat. 1087 and 1090, as amended (7 U.S.C. 1622, 1624) a notice was published in the FEDERAL REGISTER (37 F.R. 844) on January 19, 1972, regarding a proposed revision of the United States Standards for Rough Rice (7 CFR 68.201 et seq.), Brown Rice (7 CFR 68.251 et seq.), and Milled Rice (7 CFR 68.301 et seq.) according to the administrative procedure provisions of 5 U.S.C., section 553.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed rulemaking. More than 800 reprints of proposed rule making, showing changes in the standards, were distributed to interested trade and Government organizations. Two letters that represented 6 rice growers' cooperatives and 24 independent rice milling companies were received by the Hearing Clerk. All responses supported the proposed changes.

No objections have been received and the proposed standards are hereby adopted, without substantive change, as set forth below.

U.S. STANDARDS FOR ROUGH RICE[1]

TERMS DEFINED

§ 68.201 Definitions.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Chalky kernels.* Whole kernels of rice which are one-half or more chalky.

(c) *Classes.* There are four classes of rough rice as follows:

Long Grain Rough Rice.
Medium Grain Rough Rice.
Short Grain Rough Rice.
Mixed Rough Rice.

Classes shall be based on the percentage of whole kernels and types of rice.

(1) "Long grain rough rice" shall consist of rough rice which contains more than 25.0 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10.0 percent of whole kernels of medium or short grain rice.

(2) "Medium grain rough rice" shall consist of rough rice which contains more than 25.0 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10.0 percent of whole kernels of long- or short-grain rice.

(3) "Short grain rough rice" shall consist of rough rice which contains more than 25.0 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10.0 percent of whole kernels of long- or medium-grain rice.

(4) "Mixed rough rice" shall consist of rough rice which contains more than 25.0 percent of whole kernels and which, after milling to a well-milled degree, contains more than 10.0 percent of "other types" as defined in paragraph (h) of this section.

(d) *Damaged kernels.* Whole kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and whole kernels of parboiled rice in nonparboiled rice. "Heat-damaged kernels" (see paragraph (e) of this section) shall not function as damaged kernels.

(e) *Heat-damaged kernels.* Whole kernels of rice which are materially discolored and damaged as a result of heating, and whole kernels of parboiled rice in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(f) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that are produced in the milling of rough rice to a well-milled degree.

(g) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(h) *Other types.* (1) Whole kernels of: (i) Long-grain rice in medium- or short-grain rice and medium- or short-grain rice in long-grain rice, (ii) medium-grain rice in long- or short-grain rice and long- or short-grain rice in medium-grain rice, (iii) short-grain rice in long- or medium-grain rice and long- or medium-grain rice in short-grain rice, and (2) broken kernels of long-grain rice in medium- or short-grain rice and broken kernels of medium- or short-grain rice in long-grain rice.

NOTE: Broken kernels of medium-grain rice in short-grain rice and broken kernels of short-grain rice in medium-grain rice shall not be considered other types.

(i) *Paddy kernels.* Whole or broken unhulled kernels of rice.

(j) *Red rice.* Whole kernels of rice on which there is an appreciable amount of red bran.

(k) *Rough rice.* Rice (*Oryza sativa*) which consists of 50.0 percent or more of paddy kernels (see paragraph (i) of this section) of rice.

(l) *Seeds.* Whole or broken seeds of any plant other than rice.

(m) *Smutty kernels.* Whole or broken kernels of rice which are distinctly infected by smut.

(n) *Types of rice.* There are three types of rough rice as follows:

Long grain.
Medium grain.
Short grain.

Types shall be based on the length/width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.208).

(o) *Ungelatinized kernels.* Whole kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(p) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 68.202 Basis of determinations.

The determination of seeds, objectionable seeds, heat-damaged kernels, red rice and damaged kernels, chalky kernels, other types, color, and the special grade Parboiled rough rice shall be on the basis of the whole kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. When determining class the percentage of (a) whole kernels of rough rice shall be determined on the basis of the original sample and (b) types of rice shall be determined on the basis of the whole kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. Smutty kernels shall be determined on the basis of the rough rice after it has been cleaned and shelled as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.208), or by any method which gives equivalent results. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.208), or by any method which gives equivalent results.

§ 68.203 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual examinations shall be maintained by the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

§ 68.204 Milling requirements.

In determining milling yield (see § 68.201(f)) in rough rice, the degree of milling shall be equal to, or better than, that of the interpretive line sample for "well milled" rice.

§ 68.205 Milling yield determination.

Milling yield shall be determined by the use of equipment and procedures set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.208), or by any method which gives equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the rough rice exceeds 18.0 percent.

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

§ 68.206 **Moisture.**

Moisture content shall be determined by the use of equipment and procedures set forth in the Equipment Manual, GR Instruction 916–6 (see § 68.208), or by any method which gives equivalent results.

§ 68.207 **Percentages.**

Percentages shall be determined on the basis of weight and shall be rounded off in accordance with instructions in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.208). Percentages, except for milling yield, shall be stated in whole and tenth percent to the nearest tenth percent. The percentage for milling yield shall be stated to the nearest whole percent.

§ 68.208 **References.**

The following publications are referenced in these standards. Copies will be made available, upon request, from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture:

(a) Rice Inspection Manual, GR Instruction 918–2, U.S. Department of Agriculture, Consumer and Marketing Service.

(b) Equipment Manual, GR Instruction 916–6, U.S. Department of Agriculture, Consumer and Marketing Service.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 68.209 **Grades and grade requirements for the classes of rough rice. (See also § 68.211.).**

Grade	Maximum limits of—						
	Seeds and heat-damaged kernels		Red rice and damaged kernels (singly or combined)	Chalky kernels [1]			Color requirements [1]
	Total (singly or combined)	Heat—damaged kernels and objectionable seeds (singly or combined)		In long grain rice	In medium or short grain rice	Other types [2]	
	Number in 500 grams	*Number in 500 grams*	*Percent*	*Percent*	*Percent*	*Percent*	
U.S. No. 1	2	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	4	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	7	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	20	15	4.0	6.0	8.0	5.0	May be gray or slightly rosy.
U.S. No. 5	30	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	[3] 15.0	15.0	15.0	10.0	May be dark gray or rosy.
U.S. Sample grade	U.S. Sample grade shall be rough rice which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6 inclusive, (b) contains more than 14.0 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, or (e) is otherwise of distinctly low quality.						

[1] For the special grade Parboiled rough rice see § 68.211 (a).
[2] These limits do not apply to the class Mixed Rough Rice.
[3] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

§ 68.210 **Grade designation.**

(a) The grade designation for all classes of rough rice, except Mixed Rough Rice, shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the class; (4) each applicable special grade (see § 68.212); and (5) a statement of the milling yield. (b) The grade designation for the class Mixed Rough Rice shall include, in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the class; (4) each applicable special grade (see § 68.212); (5) the percentage of whole kernels of each type in the order of predominance; and (6) a statement of the milling yield.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 68.211 **Special grades and special grade requirements.**

The following special grades are established for rough rice. Except as provided in this section, all grades and grade requirements of the standards shall apply to such rice.

(a) *Parboiled rough rice.* Parboiled rough rice shall be rough rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6 inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered "Parboiled Light"; (2) distinctly but not materially colored by the parboiling process, it shall be considered "Parboiled"; (3) materially colored by the parboiling process, it shall be considered "Parboiled Dark". The color levels for "Parboiled Light", "Parboiled", and "Parboiled Dark" rice shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for "Chalky kernels" and the "Color requirements" shown in § 68.209 are not applicable to the special grade "Parboiled rough rice".

(b) *Smutty rough rice.* Smutty rough rice shall be rough rice which contains more than 3.0 percent of smutty kernels.

(c) *Weevily rough rice.* Weevily rough rice shall be rough rice which is infested with live weevils or other live insects injurious to stored rice.

§ 68.212 **Special grade designation.**

The grade designation for parboiled, smutty, or weevily rough rice shall include, following the class, the word(s) "Parboiled Light", "Parboiled", "Parboiled Dark", "Smutty", or "Weevily", as warranted, and all other information prescribed in § 68.210.

U.S. STANDARDS FOR BROWN RICE FOR PROCESSING [1]

TERMS DEFINED

§ 68.251 **Definitions.**

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Brown rice for processing.* Rice (*Oryza sativa*) which consists of more than 50.0 percent of kernels of brown rice, and which is intended for processing to milled rice.

(d) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(e) *Classes.* There are four classes of brown rice for processing:

Long Grain Brown Rice for Processing.
Medium Grain Brown Rice for Processing.
Short Grain Brown Rice for Processing.
Mixed Brown Rice for Processing.

Classes shall be based on the percentage of whole kernels and types of rice.

(1) "Long-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of medium- or short-grain rice.

(2) "Medium-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of short-grain rice.

(3) "Short-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of medium-grain rice.

(4) "Mixed brown rice for processing" shall be brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and more than 10.0 percent of "other types" as defined in paragraph (k) of this section.

(f) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means (including parboiled kernels in nonparboiled rice and smutty kernels). "Heat-damaged kernels" (see paragraph (h) of this section) shall not function as damaged kernels.

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

(g) *Foreign material.* All matter other than rice and seeds. Hulls, germs, and bran which have separated from the kernels of rice shall be considered foreign material.

(h) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretative line for heat-damaged kernels.

(i) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that are produced in the milling of brown rice for processing to a well-milled degree.

(j) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(k) *Other types.* (1) Whole kernels of: (i) Long-grain rice in medium- or short-grain rice and medium- or short-grain rice in long-grain rice, (ii) medium-grain rice in long- or short-grain rice and long- or short-grain rice in medium-grain rice, (iii) short-grain rice in long- or medium-grain rice and long- or medium-grain rice in short-grain rice, and (2) broken kernels of long-grain rice in medium- or short-grain rice and broken kernels of medium- or short-grain rice in long-grain rice.

NOTE: Broken kernels of medium-grain rice in short-grain rice and broken kernels of short-grain rice in medium-grain rice shall not be considered other types.

(l) *Paddy kernels.* Whole or broken unhulled kernels of rice.

(m) *Red rice.* Whole or broken kernels of rice on which the bran is distinctly red in color.

(n) *Seeds.* Whole or broken seeds of any plant other than rice.

(o) *Smutty kernels.* Whole or broken kernels of rice which are distinctly infected by smut.

(p) *Types of rice.* There are three types of brown rice for processing:

Long grain.
Medium grain.
Short grain.

Types shall be based on the length/width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.259).

(q) *Ungelatinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(r) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the germs and the bran layers have been removed.

(s) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(t) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(u) *6½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 68.252 Basis of determinations.

The determination of kernels damaged by heat, heat-damaged kernels, parboiled kernels in nonparboiled rice, and the special grade Parboiled brown rice for processing shall be on the basis of the brown rice for processing after it has been milled to a well-milled degree. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.259) or by any method which gives equivalent results.

§ 68.253 Broken kernels determinations.

Broken kernels shall be determined by the use of equipment and procedures set forth in the Rice Inspection Manual, GR Instruction 918–2 (see §68.259), or by any method which gives equivalent results.

§ 68.254 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

§ 68.255 Milling requirements.

In determining milling yield (see § 68.251(i)) in brown rice for processing, the degree of milling shall be equal to, or better than, that of the interpretive line sample for "well milled" rice.

§ 68.256 Milling yield determination.

Milling yield shall be determined by the use of equipment and procedures set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.259), or by any method which gives equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the brown rice for processing exceeds 18.0 percent.

§ 68.257 Moisture.

Moisture content shall be determined by the use of equipment and procedures set forth in the Equipment Manual, GR Instruction 916–6 (see § 68.259), or by any method which gives equivalent results.

§ 68.258 Percentages.

Percentages shall be determined on the basis of weight and shall be rounded off in accordance with instructions in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.259). Percentages, except for milling yield, shall be stated in whole and tenth percent to the nearest tenth percent. The percentage for milling yield shall be stated to the nearest whole percent.

§ 68.259 References.

The following publications are referenced in these standards. Copies will be made available, upon request, from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture:

(a) Rice Inspection Manual, GR Instruction 918–2, U.S. Department of Agriculture, Consumer and Marketing Service.

(b) Equipment Manual, GR Instruction 916–6, U.S. Department of Agriculture, Consumer and Marketing Service.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 68.260 Grades and grade requirements for the classes of brown rice for processing. (See also § 68.262.)

Grade	Maximum limits of—											
	Paddy kernels	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined)	Chalky kernels [1]	Broken kernels					
		Total (singly or combined)	Heat-damaged kernels	Objectionable seeds			Total	Removed by a 6 plate or a 6½ sieve [2]	Other types [3]		Well-milled kernels	
	Percent	*Number in 500 grams*	*Number in 500 grams*	*Number in 500 grams*	*Number in 500 grams*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
U.S. No. 1		20	10	1	2	1.0	2.0	5.0	1.0	1.0	1.0	1.0
U.S. No. 2	2.0		40	2	10	2.0	4.0	10.0	2.0	2.0	3.0	
U.S. No. 3	2.0		70	4	20	4.0	6.0	15.0	3.0	5.0	10.0	
U.S. No. 4	2.0		100	8	35	8.0	8.0	25.0	4.0	10.0	10.0	
U.S. No. 5	2.0		150	15	50	15.0	15.0	35.0	6.0	10.0	10.0	
U.S. Sample grade.	U.S. Sample grade shall be brown rice for processing which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive, (b) contains more than 14.5 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, (e) contains more than 0.1 percent of foreign material, (f) contains live weevils or other live insects, or (g) is otherwise of distinctly low quality.											

[1] For the special grade Parboiled brown rice for processing see § 68.262(a).
[2] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[3] These limits do not apply to the class Mixed Brown Rice for Processing.

§ 68.261 Grade designation.

(a) The grade designation for all classes of brown rice for processing, except Mixed Brown Rice for Processing, shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade," as warranted; (3) the class; and (4) each applicable special grade (see § 68.263).

(b) The grade designation for the class Mixed Brown Rice for Processing shall include, in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade," as warranted; (3) the class; (4) each applicable special grade (see § 68.263); (5) the percentage of whole kernels of each type in the order of predominance; and when applicable (6) the percentage of broken kernels of each type in the order of predominance and (7) the percentage of seeds and foreign material.

NOTE: Broken kernels other than long grain, in Mixed Brown Rice for Processing, shall be certificated as "medium or short grain."

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 68.262 Special grades and special grade requirements.

The following special grades are established for brown rice for processing. Except as provided in this section, all grades and grade requirements of the standards shall apply to such rice.

(a) *Parboiled brown rice for processing.* Parboiled brown rice for processing shall be rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. Nos. 1 to 5 inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent and grade U.S. No. 5 not more than 0.5 percent of nonparboiled rice.

NOTE: The maximum limits for "Chalky kernels" shown in § 68.260 are not applicable to the special grade "Parboiled brown rice for processing".

(b) *Smutty brown rice for processing.* Smutty brown rice for processing shall be rice which contains more than 3.0 percent of smutty kernels.

§ 68.263 Special grade designation.

The grade designation for parboiled or smutty brown rice for processing shall include, following the class, the word(s) "Parboiled" or "Smutty," as warranted, and all other information prescribed in § 68.261.

U.S. STANDARDS FOR MILLED RICE [1]

TERMS DEFINED

§ 68.301 Definitions.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(d) *Classes.* There are seven classes of milled rice. The following four classes shall be based on the percentage of whole kernels and types of rice:

Long Grain Milled Rice.
Medium Grain Milled Rice.
Short Grain Milled Rice.
Mixed Milled Rice.

The following three classes shall be based on the percentage of whole kernels and of broken kernels of different size:

Second Head Milled Rice.
Screenings Milled Rice.
Brewers Milled Rice.

(1) "Long-grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and not more than 10.0 percent of whole or broken kernels of medium or short grain rice.

(2) "Medium-grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of short-grain rice.

(3) "Short-grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of medium-grain rice.

(4) "Mixed milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and more than 10.0 percent of "other types" as defined in paragraph (j) of this section.

(5) "Second head milled rice" shall consist of milled rice which, when determined in accordance with §§ 68.302 and 68.303, contains:

(i) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 7.0 percent of broken kernels removed by a 6 plate, (*c*) 0.4 percent of broken kernels removed by a 5 plate, and (*d*) 0.05 percent of broken kernels passing through a 4 sieve (southern production); or

(ii) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 50.0 percent of broken kernels passing through a 6½ sieve, and (*c*) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(6) "Screenings milled rice" shall consist of milled rice which, when determined in accordance with §§ 68.302 and 68.303, contains:

(i) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 10.0 percent of broken kernels removed by a 5 plate, and (*c*) 0.2 percent of broken kernels passing through a 4 sieve (southern producton); or

(ii) Not more than (*a*) 25.0 percent of whole kernels and (*b*) 15.0 percent of broken kernels passing through a 5½ sieve; and more than (*c*) 50.0 percent of broken kernels passing through a 6½ sieve and (*d*) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(7) "Brewers milled rice" shall consist of milled rice which, when determined in accordance with §§ 68.302 and 68.303, contains not more than 25.0 percent of whole kernels and which does not meet the kernel-size requirements for the class Second Head Milled Rice or Screenings Milled Rice.

(e) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and parboiled kernels in nonparboiled rice. "Heat-damaged kernels" (see paragraph (g) of this section) shall not function as damaged kernels.

(f) *Foreign material.* All matter other than rice and seeds. Hulls, germs, and bran which have separated from the kernels of rice shall be considered foreign material.

(g) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(h) *Milled rice.* Whole or broken kernels of rice (*Oryza sativa*) from which the hulls and at least the outer bran layers and a part of the germs have been removed; and which contain not more than 10.0 percent of seeds, paddy kernels, or foreign material, either singly or combined.

(i) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(j) *Other types.* (1) Whole kernels of: (i) Long-grain rice in medium- or short-grain rice and medium- or short-grain rice in long-grain rice, (ii) medium-grain rice in long- or short-grain rice and long- or short-grain rice in medium-grain rice, (iii) Short-grain rice in long- or medium-grain rice and long- or medium-grain rice in short-grain rice, and (2) broken kernels of long-grain rice in medium- or short-grain rice and broken kernels of medium- or short-grain rice in long-grain rice.

NOTE: Broken kernels of medium-grain rice in short-grain rice and broken kernels of short-grain rice in medium-grain rice shall not be considered other types.

(k) *Paddy kernels.* Whole or broken unhulled kernels of rice, and whole or broken kernels of brown rice.

(l) *Red rice.* Whole or broken kernels of rice on which there is an appreciable amount of red bran.

(m) *Seeds.* Whole or broken seeds of any plant other than rice.

(n) *Types of rice.* There are three types of milled rice as follows:

Long grain.
Medium grain.
Short grain.

Types shall be based on the length/width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels that are broken as set forth in the Rice Inspection Manual, GR Instruction 918-2 (see § 68.308).

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

(o) *Ungelatinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(p) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the germs and the bran layers have been removed.

NOTE: This factor is determined on an individual kernel basis and applies to the special grade Undermilled milled rice only.

(q) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(r) *5 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0781 (5/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(s) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(t) *2½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0391 (2½/64) inch in diameter, 0.075-inch from center to center, with each row staggered in relation to the adjacent rows.

(u) *4 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0625 (4/64) inch in diameter, ⅛ inch from center to center, with each row staggered in relation to the adjacent rows.

(v) *5 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0781 (5/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(w) *5½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0859 (5½/64) inch in diameter, 9/64 inch from center to center, with each row staggered in relation to the adjacent rows.

(x) *6 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(y) *6½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(z) *30 sieve.* A woven wire cloth sieve having 0.0234-inch openings, with a wire diameter of 0.0154 inch, and meeting the specifications of American Society for Testing and Materials Designation E–11–61, as set forth in the Equipment Manual, GR Instruction 916–6 (see § 68.308).

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 68.302 Basis of determination.

All determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking, as set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.308), or by any method which gives equivalent results.

§ 68.303 Broken kernels determination.

Broken kernels shall be determined by the use of equipment and procedures set forth in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.308), or by any method which gives equivalent results.

§ 68.304 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

§ 68.305 Milling requirements.

The degree of milling for milled rice; i.e., "well milled," "reasonably well milled," and "lightly milled" shall be equal to, or better than, that of the interpretive line samples for such rice.

§ 68.306 Moisture.

Moisture content shall be determined by the use of equipment and procedures set forth in the Equipment Manual, GR Instruction 916–6 (see § 68.308), or by any method which gives equivalent results.

§ 68.307 Percentages.

Percentages shall be determined on the basis of weight and shall be rounded off in accordance with instructions in the Rice Inspection Manual, GR Instruction 918–2 (see § 68.308). Percentages shall be stated in whole, tenth, and hundredth percent to the nearest tenth or hundredth percent.

§ 68.308 References.

The following publications are referenced in these standards. Copies will be made available, upon request, from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture:

(a) Rice Inspection Manual, GR Instruction 918–2, U.S. Department of Agriculture, Consumer and Marketing Service.

(b) Equipment Manual, GR Instruction 916–6, U.S. Department of Agriculture, Consumer and Marketing Service.

GRADE, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 68.309 Grades and grade requirements for the classes Long-Grain Milled Rice, Medium-Grain Milled Rice, Short-Grain Milled Rice, and Mixed-Milled Rice. (See also § 68.314.)

Grade	Maximum limits of—										
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined)	Chalky kernels [1]		Broken kernels				Other types [3]	Color [1] and milling requirements [4]
	Total	Heat-damaged kernels and objectionable seeds		In long grain rice	In medium or short grain rice	Total	Removed by a 5 plate [2]	Removed by a 6 plate [2]	Through a 6 sieve [2]		
	Number in 500 grams	*Number in 500 grams*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	
U.S. No. 1	2	1	0.5	1.0	2.0	4.0	0.04	0.1	0.1	1.0	Shall be white or creamy and shall be well milled.
U.S. No. 2	4	2	1.5	2.0	4.0	7.0	.06	.2	.2	2.0	May be slightly gray and shall be well milled.
U.S. No. 3	7	5	2.5	4.0	6.0	15.0	.1	.8	.5	3.0	May be light gray and shall be at least reasonably well milled.
U.S. No. 4	20	15	4.0	6.0	8.0	25.0	.4	2.0	.7	5.0	May be gray or slightly rosy and shall be at least reasonably well milled.
U.S. No. 5	30	25	[6] 6.0	10.0	10.0	35.0	.7	3.0	1.0	10.0	May be dark gray or rosy and shall be at least lightly milled.
U.S. No. 6	75	75	[5] 15.0	15.0	15.0	50.0	1.0	4.0	2.0	10.0	May be dark gray or rosy and shall be at least lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of any of these classes which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6 inclusive, (b) contains more than 15.0 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, (e) contains more than 0.1 percent of foreign material, (f) contains live or dead weevils or other insects, insect webbing, or insect refuse, or (g) is otherwise of distinctly low quality.										

[1] For the special grade Parboiled milled rice see § 68.314(c).
[2] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[3] These limits do not apply to the class Mixed Milled Rice.
[4] For the special grade Undermilled milled rice see § 68.314(d).
[5] Grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

§ 68.310 Grades and grade requirements for the class Second Head Milled Rice. (See also § 68.314.)

Grade	Maximum limits of—				Color [1] and milling requirements [2]
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined)	Chalky kernels [1]	
	Total	Heat-damaged kernels and objectionable seeds			
	Number in 500 grams	*Number in 500 grams*	*Percent*	*Percent*	
U.S. No. 1	15	5	1.0	4.0	Shall be white or creamy and shall be well milled.
U.S. No. 2	20	10	2.0	6.0	May be slightly gray and shall be well milled.
U.S. No. 3	35	15	3.0	10.0	May be light gray and shall be at least reasonably well milled.
U.S. No. 4	50	25	5.0	15.0	May be gray or slightly rosy and shall be at least reasonably well milled.
U.S. No. 5	75	40	10.0	20.0	May be dark gray or rosy and shall be at least lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive, (b) contains more than 15.0 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, (e) contains more than 0.1 percent of foreign material, (f) contains live or dead weevils or other insects, insect webbing, or insect refuse, or (g) is otherwise of distinctly low quality.				

[1] For the special grade Parboiled milled rice see § 68.314(c).
[2] For the special grade Undermilled milled rice see § 68.314(d).

§ 68.311 Grades and grade requirements for the class Screenings Milled Rice. (See also § 68.314.)

Grade	Maximum limits of—			Color [1] and milling requirements [2]
	Paddy kernels and seeds		Chalky kernels [1]	
	Total (singly or combined)	Objectionable seeds		
	Number in 500 grams	*Number in 500 grams*	*Percent*	
U.S. No. 1 [3 4]	30	20	5.0	Shall be white or creamy and shall be well milled.
U.S. No. 2 [3 4]	75	50	8.0	May be slightly gray and shall be well milled.
U.S. No. 3 [3 4]	125	90	12.0	May be light gray or slightly rosy and shall be at least reasonably well milled.
U.S. No. 4 [3 4]	175	140	20.0	May be gray or rosy and shall be at least reasonably well milled.
U.S. No. 5	250	200	30.0	May be dark gray or very rosy and shall be at least lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive, (b) contains more than 15 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, (e) has a badly damaged or extremely red appearance, (f) contains more than 0.1 percent of foreign material, (g) contains live or dead weevils or other insects, insect webbing, or insect refuse, or (h) is otherwise of distinctly low quality.			

[1] For the special grade Parboiled milled rice see § 68.314(c).
[2] For the special grade Undermilled milled rice see § 68.314(d).
[3] Grades U.S. No. 1 to U.S. No. 4 inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[4] Grades U.S. No. 1 to U.S. No. 4 inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve.

§ 68.312 Grades and grade requirements for the class Brewers Milled Rice. (See also § 68.314.)

Grade	Maximum limits of—		Color [1] and milling requirements [3]
	Paddy kernels and seeds		
	Total (singly or combined)	Objectionable seeds	
	Percent	*Percent*	
U.S. No. 1 [3 4]	0.5	0.05	Shall be white or creamy and shall be well milled.
U.S. No. 2 [3 4]	1.0	.1	May be slightly gray and shall be well milled.
U.S. No. 3 [3 4]	1.5	.2	May be light gray or slightly rosy and shall be at least reasonably well milled.
U.S. No. 4 [3 4]	3.0	.4	May be gray or rosy and shall be at least reasonably well milled.
U.S. No. 5	5.0	1.5	May be dark gray or very rosy and shall be at least lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive, (b) contains more than 15 percent of moisture, (c) is musty, or sour, or heating, (d) has any commercially objectionable foreign odor, (e) has a badly damaged or extremely red appearance, (f) contains more than 0.1 percent of foreign material, (g) contains more than 15 percent of broken kernels that will pass through a 2½ sieve, (h) contains live or dead weevils or other insects, insect webbing or insect refuse, or (i) is otherwise of distinctly low quality.		

[1] For the special grade Parboiled milled rice see § 68.314(c).
[2] For the special grade Undermilled milled rice see § 68.314(d).
[3] Grades U.S. No. 1 to U.S. No. 4 inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[4] Grades U.S. No. 1 to U.S. No. 4 inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve. This limit does not apply to the special grade Granulated brewers milled rice.

§ 68.313 Grade designation.

(b) The grade designation for all classes of milled rice, except Mixed Milled Rice, shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the class; and (4) each applicable special grade (see § 68.315). The grade designation for the class Mixed Milled Rice shall include, in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the class; (4) each applicable special grade (see § 68.315); (5) the percentage of whole kernels of each type in the order of predominance; and when applicable (6) the percentage of broken kernels of each type in the order of predominance and (7) the percentage of seeds and foreign material.

NOTE: Broken kernels other than long grain, in Mixed Milled Rice, shall be certificated as "medium or short grain."

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS AND SPECIAL GRADE DESIGNATIONS

§ 68.314 Special grades and special grade requirements.

The following special grades are established for milled rice. Except as provided in this section, all grades and grade requirements of the standards shall apply to such rice.

(a) *Coated milled rice.* Coated milled rice shall be milled rice which is coated, in whole or in part, with glucose and talc.

(b) *Granulated brewers milled rice.* Granulated brewers milled rice shall be milled rice which has been crushed or granulated so that 95.0 percent or more will pass through a 5 sieve, 70.0 percent or more will pass through a 4 sieve, and not more than 15.0 percent will pass through a 2½ sieve.

(c) *Parboiled milled rice.* Parboiled milled rice shall be milled rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6 inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than

0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered "Parboiled Light"; (2) distinctly but not materially colored by the parboiling process, it shall be considered "Parboiled"; (3) materially colored by the parboiling process, it shall be considered "Parboiled Dark." The color levels for "Parboiled Light," "Parboiled," and "Parboiled Dark" shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for "Chalky kernels" and the "Color requirements" in §§ 68.309, 68.310, 68.311, and 68.312 are not applicable to the special grade "Parboiled milled rice."

(d) *Undermilled milled rice.* Undermilled milled rice shall be milled rice which is not equal to the milling requirements for "well milled," "reasonably well milled," and "lightly milled" rice (see § 68.305). Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 2.0 percent, grades U.S. No. 3 and U.S. No. 4 not more than 5.0 percent, grade U.S. No. 5 not more than 10.0 percent, and grade U.S. No. 6 not more than 15.0 percent, of well-milled kernels. Grade U.S. No. 5 shall contain not more than 10.0 percent of red rice and damaged kernels (singly or combined) and in no case more than 6.0 percent of damaged kernels.

NOTE: The "Color and milling requirements" in §§ 68.309, 68.310, 68.311, and 68.312 are not applicable to the special grade "Undermilled milled rice."

§ 68.315 Special grade designation.

The grade designation for coated, granulated brewers, parboiled, or undermilled milled rice shall include, following the class, the word(s) "Coated," "Granulated," "Parboiled Light," "Parboiled," "Parboiled Dark," or "Undermilled," as warranted, and all other information prescribed in § 68.313.

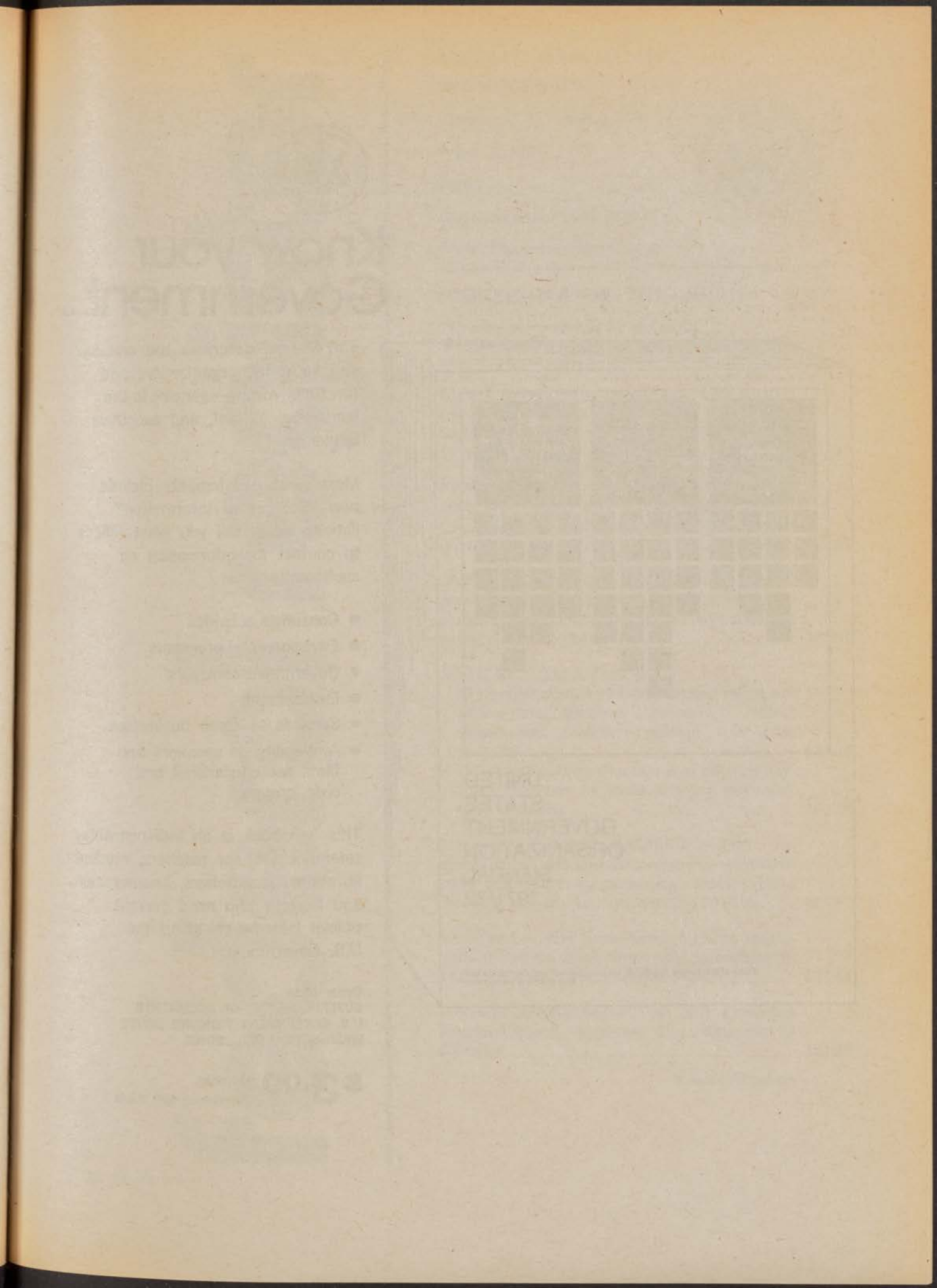
The changes have been thoroughly reviewed with the rice trade, including farmers and dealers. Both groups strongly urge that the changes be made effective as soon as possible. The 1972 rice crop is almost ready for harvest and should be marketed on the basis of the revised standards which more adequately reflect the overall quality of the product. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the revision are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. The foregoing standards supersede the U.S. Standards for Rough Rice, Brown Rice, and Milled Rice as amended effective June 10, 1968, and shall become effective July 1, 1972.

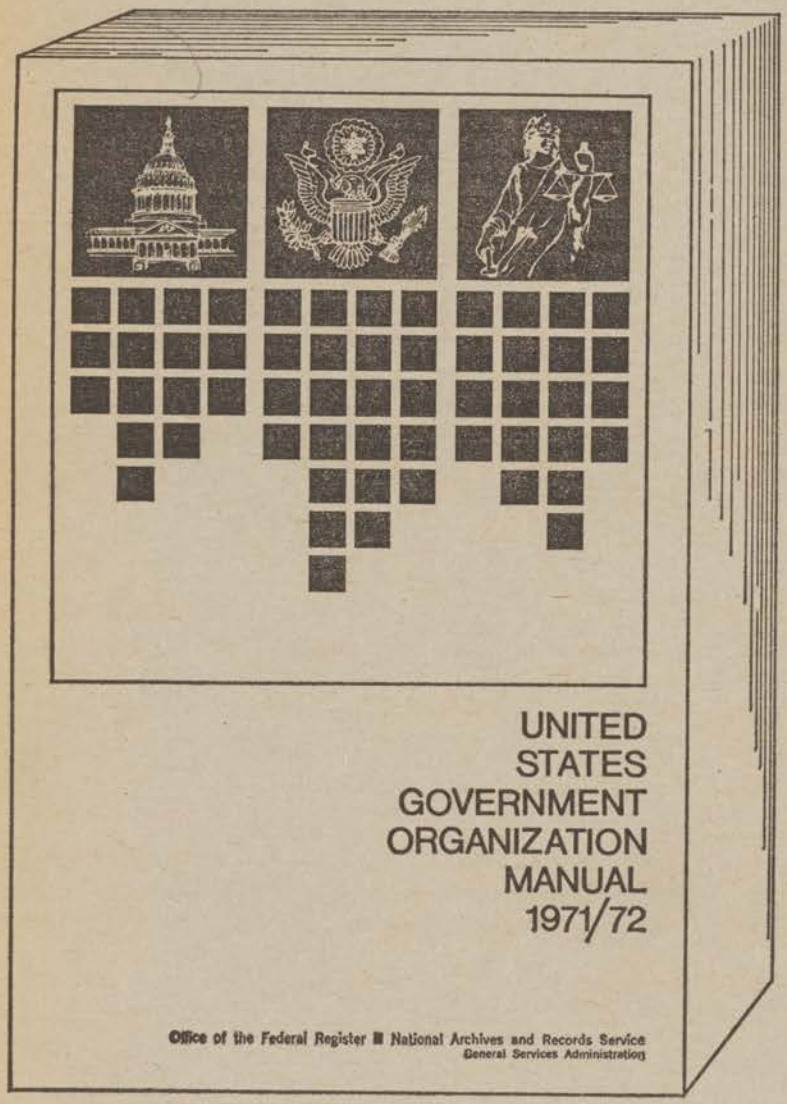
Done at Washington, D.C., on June 14, 1972.

E. L. PETERSON,
Administrator.

[FR Doc.72-9233 Filed 6-16-72;8:50 am]



Know your Government...



The Manual describes the creation and authority, organization, and functions of the agencies in the legislative, judicial, and executive branches.

Most agency statements include new "Sources of Information" listings which tell you what offices to contact for information on such matters as:

- Consumer activities
- Environmental programs
- Government contracts
- Employment
- Services to small businesses
- Availability of speakers and films for educational and civic groups

This handbook is an indispensable reference tool for teachers, students, librarians, researchers, businessmen, and lawyers who need current official information about the U.S. Government.

Order from
SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

$3.00 per copy.
Paperbound, with charts